113-287

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1115.

ALFRED SULLY, APPELLANT,

vs.

JAMES N. DRENNAN, W. L. McALLISTER, C. H. KRAMER, M. D. BURKET, J. W. BOWDLE, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED OCTOBER 18, 1884.

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1 Pleas in the circuit court of the United States for the southern district of Iowa, central division, at a term thereof begun and holden at the United States court-house, in the city of Des Moines, in said district, on the second Tuesday of May, 1884, it being the thirteenth day of May, A. D. 1884. Present: Hon'l David J. Brewer, Hon. J. M. Love, and Hon. O. P. Shiras, judges.

Attest: E. R. MASON, *Clerk.*

2 Be it remembered that heretofore, to wit, on the 13th day of May, 1884, a transcript of record from the circuit court of the State of Iowa in and for Mahaska county was filed in the clerk's office of the United States circuit court for the southern district of Iowa, central division, in a certain cause wherein James M. Drennan *et al.* were complainants and Thomas Graham *et al.* were defendants, which said transcript is in the words and figures following, to wit:

3 In the District Court of the State of Iowa in and for Mahaska County. May Term, 1883.

JAMES M. DRENNAN, W. L. MCALISTER, C. H. KRAMAR, M. D. BURKET, J. W. Bowdle, Osman Watland, H. N. Whitacre, H. C. Gallaher, A. Cadwallader, I. N. Penland, J. L. Saunders, J. E. Starke, F. A. Winder, Chas. Freighly, J. S. Clements, Geo. A. Robert, O. G. Knudson, S. Janney, Wm. Burkes, A. Rockwell, L. Garner, John Versteeg, G. W. Carrell, Kalbach & Co., Kalbach Sons & Co., I Bowdle, D. Fessler, A. J. Winder, John Nicholson, G. B. Gatlin, Wm. Widdows, J. S. Ransdell, David Steen, H. T. Wright, O. Wildman, David Stanton, Robert Thomas, J. S. Beal, Vickers & Crawford, Sanford Vickers, F. E. Crawford, P. W. Phillips, O. Fleming, U. Hamblen, J. R. Jackson, C. T. Bowen, and other tax-payers of Prairie Township, Plaintiffs,

against

THOMAS GRAHAM, HUGH CATHCART & PLUMMER EDWARDS, Trustees of Prairie T'p, Mahaska County, Iowa; John H. Warren,
4 Treasurer of said County; The Chicago, Burlington & Pacific Railroad Company; and Alfred Sully, Defendants.

Your petitioners, the above-named plaintiffs, for cause of action state:

1st. That they are resident tax payers of Prairie township, Mahaska county, Iowa, and they bring this action for themselves anfor and on behalf of all of the other tax payers of said township.

2nd. That defendants, Thomas Graham, Hugh Cathcart, and Plummer Edwards, are the township trustees of said Prairie township; the defendant, John H. Warren, is the county treasurer of said Mahaska county; and the defendant, The Chicago, Burlington & Pacific Railroad Company, is a corporation duly organized under the laws of Iowa, and is capable of suing and of being sued.

3rd. That said corporation was first organized under the name of the New Sharon Coal Valley and Eastern Railroad Com-
5 pany, and that afterward, to wit, on or about the 18th day of

December, 1881, its name was duly changed to Chicago, Burlington & Pacific Railroad Company.

4th. That on or about the 27th of April, 1880, a petition was presented to the township trustees of said Prairie township, purporting to be signed by a majority of the resident freehold tax payers of said township, asking that the question of aiding in the construction of the said New Sharon Coal Valley and Eastern Railroad Company by a tax of three per cent. on the taxable property of said township be submitted to the legal voters of said township at a special election called for that purpose A true copy of said petition is hereto attached, marked Exhibit "A," and made a part hereof.

5th. That on the 27th day of April, 1880, in accordance with the prayer of such petition, the trustees of said township called a special election for the purpose of voting on said question, and issued
6 and published a notice of the same. A true copy of said notice is hereto attached, marked Exhibit "B," and made a part heroof.

6th. That on the 11th day of May, 1880, pursuant to said notice, said special election was held in the town of New Sharon, in said Prairie township, and said vote was canvassed, and it was declared by the judge of said election that there was a majority of three in favor of such taxation, and the result of said election was certified to the auditor of said county by the clerk of said election. A true copy of said certificate is hereto attached, marked Exhibit "C," and made part hereof.

7th. That thereafter, to wit, on the 18th day of September, 1880, the board of supervisors of said county made a levy of said tax on the taxable property of said Prairie township, and caused the same to be spread upon the tax books of said county. A true topy of which order making the levy is attached, marked Ex. "D."

7 8th. That after said election and previous to said levy a paper was filed in the office of the auditor of said county, signed by certain resident tax payers of said Prairie township, directed and addressed to the board of supervisors of the county, protesting against the levy of said tax and giving notice that the legality of said tax would be contested in the courts, of which notice and protest the said railroad company had actual and constructive notice. A true copy of said paper is hereto attached, marked Exhibit "E," and made a part hereof.

9th. That the articles of incorporation of said New Sharon Coal Valley & Eastern Railroad Company at the time the said tax was voted, provided and specified that the object of the corporation was to lay out, locate, build, equip, and operate a railroad from New Sharon to any selected point on the Mississippi river and in the State of Iowa; and also to extend said road west to the
8 Missouri river or to the west line of the State of Iowa.

10th. Said articles of incorporation further provided and specified that the president of said corporation with the approbation of a majority of the board of directors should have power to contract with any person or persons for work, material, right of

way, and for all other purposes for the construction and operation of the road.

11th. That David Morgan was at the time said tax was voted and prior thereto the president of said corporation, and with the approbation of a majority of all the directors he drew the said petition for and the notice of election hereinbefore referred to, and made the representations hereinafter referred to, in order to induce the electors of said township to vote the tax aforesaid.

12th. Your petitioners further state the said David Mor-
9 gan, president, as aforesaid, while acting for and on behalf of said railroad corporation, and with the approbation of a majority of the directors, did, for the purpose of inducing the tax payers and electors of said Prairie township to sign said petition for an election and to vote for the tax at said election, publicly, falsely, and fraudulently state and represent to said electors that the said railroad company had made arrangements with other railroad corporations, to wit, the Chicago, Burlington and Quincy Railroad Company and the Chicago, Milwaukee and St. Paul Railroad Company, by which either of said corporations would construct and equip the said road to the said town of Sharon as soon as the said tax was voted; that said railroad companies had each offered to furnish all needful money for grading, ironing, and equipping said road as soon as said tax was voted; that the said road would
10 be built from the East to New Sharon and would be an independent competing line from the said town of Sharon to the East; that the same representations were also made by the other directors of said corporation; that such representations were false and fraudulent and known to be false by the said David Morgan, president, as aforesaid, at the time he made the same, and they were relied upon by the electors of said Prairie township and was operative in inducing to vote the tax as aforesaid.

13th. That the said David Morgan, president as aforesaid, caused to be published in the "New Sharon Star," a weekly newspaper published in the town of New Sharon, in said township, on the 5th day of May, 1880, six days before said election, an article in which it was stated that the Chicago, Burlington and Quincy Railroad Company and the Chicago, Milwaukee and St. Paul Railroad Company stood ready to and would do the work on and grade,
11 iron, tie, and equip the said New Sharon Coal Valley and Eastern railroad to the said town of Sharon from an eastern connection as soon as the said tax was voted. That H. J. Vail was one of the directors in and secretary of said corporation last named, and was the editor and publisher of said newspaper, and he published said notice therein, and the people and electors of said township were induced to vote said tax by reason of such representation and the representation hereinbefore mentioned; that said representations were false and known to be false by the said Morgan at the time he made the same.

14th. Your petitioners further state that the certificate of the election and the result thereof was not made out and filed in the office of the county auditor of said county until the 26th day of August,

1880, and was not recorded in the office of the recorder of
12 deeds of the county until the 7th day of September, 1880,
nearly four months after the day on which said election was held.

15th. Your petitioners further allege that the said railroad company has failed and neglected to comply with and perform the terms and conditions contained in said petition for the election and notice of election aforesaid: (1) That the said railroad was not fully completed and running to a depot in the town of Sharon, in Prairie township, Mahaska county, Iowa, within the two years specified in said petition and notice. (2) That said road was not completed within the said two years to any city or town in existence when said tax was voted. (3) That said railroad was not built and running to a depot in said town of Sharon within two years from the time said tax was voted. (4) That said road was not built or
equipped or operated from New Sharon to any point on the
13 Mississippi river within two years from the time said tax was
voted. (5) That said railroad was not built or equipped or operated or extended from New Sharon west to the Missouri river or to the west line of the State of Iowa within two years from the time said tax was voted.

16th. Petitioners further aver that at the expiration of the two years specified in the petition for said election and also in said notice of election, to wit, on the 11th day of May, 1882, said railroad company had built or partially built a railroad from a point within town of Sharon, in Prairie township, some five miles in a northwesterly direction from said town, and that all of the road built at said time was within the said Prairie township, about five miles in length, and not connecting or running to any other town or township, and was not fully completed to a depot within the town
14 of New Sharon, nor were the cars running to any depot built
by said railroad company in said town at said date, and this was all of the road built and operated by said company at said date; and said road was not in any manner operated at said date, except for purposes of construction of the road.

17th. That the defendant, The Chicago, Burlington and Pacific Railroad Company, claim that said tax is now due and payable, and by its officers and agents have made a demand upon all of the tax payers of said Prairie township for the payment of said tax, and are threatening said tax payers with penalties and litigation unless their demands are complied with.

18th. That said railroad company, by its officers and agents, have demanded of the defendants, the trustees of said township, that
they certify to the county treasurer of said county that the
15 conditions required of the railroad company are set forth in
the notice for the special election at which the tax in question was voted have been complied with, and they have corruptly endeavored to persuade them to make said certificate, and they are still endeavoring by threats and by the commencement of suits against them individually for damages in a large sum of money in the United States courts to compel them to make said certificate;

and petitioners aver that they fear that said trustees will yield to their demands and make such a certificate unless restrained by order of this court.

19th. Petitioners further allege that defendant, Alfred Sully, one of the defendants herein, makes some claim to the taxes levied under and by virtue of said special election, but petitioners aver that whether he has any interest in the matter in litigation
16 they have neither knowledge or information sufficient to form a belief, but they ask that he may be made a party defendant, and that he may be concluded and estopped by the judgment and decree entered herein.

20th. Petitioners further aver that the questions involved in this action are of common and general interest to many persons, to wit, of all of the tax payers of said Prairie township, and that said parties are very numerous, and it is impractical to bring them all before the court, they therefore bring this action for the benefit and on behalf of all the tax payers of said township.

21st. Petitioners further aver that said tax is illegal and void and not inforcible or collectable from these petitioners or from any of the tax payers in said township for the following reasons, viz:

(1.) Because said vote in favor of said tax was procured by
17 fraud herebefore set out. (2.) Because the notice of said election does not specify the amount of work upon said proposed railroad line required to be completed before said tax shall be paid to the railroad company. (3.) It does not specify where the said work shall be performed. (4.) It does not specify the line of the railroad proposed to be aided. (5.) It does not specify to what part said road shall be fully completed before such tax shall become due, collectable, and payable. (6.) That said notice of election is void for uncertainty. (7.) That the certificate of the clerks of election was not filed in the office of the auditor of said county forthwith after said election, as required by law, nor until more than three months after said election. (8.) That the said certificate was not recorded in the office of the recorder of deeds of the said county at once as required by law, and not until nearly four months
18 after said election. (9.) Because the terms and conditions upon which said tax was voted were not complied by the said railroad company as hereinbefore stated.

22nd. Petitioners further allege that a true copy of the articles of incorporation of said railroad corporation, New Sharon Coal Valley and Eastern Railroad Company, nor the Chicago, Burlington and Pacific Railroad Company, together with the amendments thereto, made and adopted on or about 8th of December, 1880, on or about the 18th day of May, 1881, and on or about the 18th day of December, 1881, are hereunto attached, marked Exhibits "F," "G," "H," & "I," and made a part hereof.

23rd. Petitioners further aver that they have no adequate remedy at law, wherefore your petitioners pray that said tax be adjudged and decreed null and void and not collectable; that a tempo-
19 rary injunction issue restraining and enjoining said township trustees and their successors in office from certifying to the

county treasurer of said county that the conditions required of the railroad company and set forth in the notice for the special election at which the tax was voted have been complied with, and also restraining said Chicago, Burlington and Pacific Railroad Company, its successors, assigns, and the said John H. Warren, county treasurer, and his successor, and also the defendant, Alfred Sully, from in any manner endeavoring to collect said tax or any part thereof, or from endeavoring to procure the certificate aforesaid from the township trustee of said Prairie township; and that upon the final hearing of this cause such injunction, or one in accordance with the prayer hereof be made perpetual, and for such other and further relief as shall to the court seem just and equitable.

BLANCHARD & WILLIAMS &
GEORGE C. MORGAN,
Attorneys for Plaintiffs.

20 STATE OF IOWA, }
Mahaska County, } ss:

I, James M. Drennen, being duly sworn, depose and say: That I am one of the plaintiffs in the above-entitled cause; that I have heard the foregoing petition read, and that all the matters and things therein contained are true, as I verily believe.

JAMES M. DRENNEN.

Subscribed and sworn to before me, by the said Jas. M. Drennen, at New Sharon, Iowa, this 21st day of March, A. D. 1883.

[SEAL.] GEO. C. MORGAN,
Notary Public.

Now, to wit, on the 22nd day of August, 1883, it is ordered that the injunction prayed for in the above and foregoing petition and the amendment thereto issue, but only after the giving of a bond by plaintiffs, conditioned as required by law, in the penalty of $2,000.00, with sureties to be approved by the clerk.

W. R. LEWIS, *Judge.*

21 EXHIBIT "A."

APRIL 23, 1880.

Petition for a Railroad Election.

To the trustees of Prairie township, Mashaka county, State of Iowa:

We, your humble petitioners and resident freehold tax payers of the above-mentioned township, county, and State, most respectfully ask that you submit the question of aiding in the construction of the New Sharon Coal Valley and Eastern Railroad to the voters of this township, the rate per centum to be levied being three per cent. of the assessed valuation of the township, one-half to be collected the first year (1880) and one-half the following year (1881), the road to be fully completed to a depot within the town of New Sharon, in the above mentioned township, county, and State, so that the cars shall be running there on or before the tax is due and collectible by the

said railroad company, the road to be built within two years from the day of election, and if not built within said time the tax never to be collectible.

April 22, 1880.

22 EXHIBIT "B."

Notice of Election.

Whereas a petition has been presented to the trustees of Prairie township, Mahaska county, Iowa, by one hundred and sixty freeholder tax payers of said township, being a majority of the freehold tax payers of said township, asking that the question of aiding by a three per cent. tax in the construction of the New Sharon Coal Valley and Eastern railroad to a depot in the town of New Sharon, in said township, county, and State, be submitted to the voters of said township:

Now, therefore, notice is hereby given that on the 11th day of May, A. D. 1880, at the town of New Sharon, in said township, county, and State, a special election will be held for the purpose of voting upon the question of aiding in the construction of the New Sharon Coal Valley and Eastern railroad by a three per cent.
23 tax of the taxable property of said township, one-half of which is to be collected the first year (1880) and one-half collected the second year (1881), said road to be fully completed and running to a depot within the town of Sharon, in said township, county, and State, so that the cars shall be running thereon before said tax is due and collectible by the said railroad company, said railroad to be built within two years from the day of election; if not built within that time, said tax never to be collectible. Those who favor said tax will have written or printed on their ballots "for taxation;" those opposed to said tax, "against taxation."

Given under our hands, this 27th day of April, 1880.

O. G. KNUDSON,
W. A. BRYAN,
J. W. ALLEN,
Trustees of Prairie Township, Mahaska Co., Iowa.

Attest:
H. M. DAVIS,
Township Clerk.

24 EXHIBIT "C."

This is to certify that on the 11th day of May, A. D. 1880, by order of the trustees of Prairie township, Mahaska county, Iowa, a special election was held in the town of Sharon, in the said township, county, and State, for the purpose of voting upon the proposition to aid in the construction of the New Sharon Coal Valley and Eastern railroad by a three per cent. tax on the taxable property of said township, one half of said tax to be collected the first year (1881) and one-half the second year (1882), said road to be fully completed and running to a depot within the town of Sharon, in said

township, county, and State, so that the cars shall be running thereon before said tax is due and collectible by said railroad company, said road to be built within two years from the day of electidn ; if not built within said time, said tax never to be collectible ;
that at said special election there were three hundred and
25 seventy-seven (377) votes cast, of which one hundred and ninety (190) were for taxation and one hundred and eighty-seven (187) against taxation, making a majority of three votes for a tax of three per cent. on the taxable property of said township to aid in the construction of said road.

H. M. DAVIS,
GEO. C. MORGAN,
Clerks of Election.

[Endorsed:] Trustees of Prairie township to the voters of said township. Notice of special election. A special certificate of election held in Prarie township. Filed for record Sept. 7th, 1880, at 3.30 o'clock p. m., and recorded in book No. 2, on page 259, of Miscellaneous Records, Mahaska county, Iowa. M. M. Rice, recorder. Filed August 26, 1880. S. B. Waters, auditor.

26 (Copy.)

Notice of Election in Prairie Township.

Whereas a petition has been presented to the trustees of Prairie township, Mahaska county, Iowa, by one hundred and sixty freehold tax payers of said township, being a majority of the freehold tax payers of said township, asking that the question of aiding by a three per cent. tax in the construction of the New Sharon Coal Valley and Eastern railroad to a depot in the town of Sharon in said township, county, and State, be submitted to the voters of said township:

Now, therefore, notice is hereby given that on the 11th day of May, 1880, at the town of Sharon, is said township, county, and State, a special election will be held for the purpose of voting upon the question of aiding in the construction of the New Sharon Coal Valley and Eastern railroad by a three per cent. tax of the taxable property of the said township, one-half of which to be collected the
first year (1881) and one-half the second year (1882), said
27 road to be fully completed and running to a depot within the town of Sharon in said township, county, and State, so that the cars shall be running thereon before the said tax is due and collectible by the said railroad company, said railroad to be built within two years from the day of election; if not built within said time, said tax never to be collectible; those who favor said *said* tax will have written or printed on their ballots "for taxation;" those opposed to said tax, "against taxation."

Given under our hands, this 27th day of April, 1880.

O. G. KNUDSON,
W. A. BRYAN,
J. W. ALLEN,
Township Trustees in Prairie Township, Mahaska County, Iowa.

Attest: H. M. DAVIS, *Clerk.*

I, H. M. Davis, township clerk of Prairie township, Mahaska county, Iowa, hereby certify that the above is a correct copy
28 of notice of election issued by order of township trustees of Prairie township, Mahaska county, Iowa, calling a special election, to be held in said township on the 11th day of May, A. D. 1880, for the purpose of voting on the proposition to aid in the construction of the New Sharon Coal Valley and Eastern railroad by a three per cent. tax on the taxable property of said township.

H. M. DAVIS,
T'w'p Clerk.

29 EXHIBIT "D."

Order of the Board of Supervisors making the Levy made Sept. 8, 1880.

In accordance with the reference made to this board of a special election, held in Prairie T'p May 11th, 1880, to aid in the construction of the New Sharon Coal Valley and Eastern R. R. Co., a 3 per cent. tax is hereby levied on the taxable property of said T'w'p, one-half of which is to be due and collectible the first year (1881), the other half the second year (1882):

Provided, no part of said tax shall be due and collectible until said railroad shall be fully completed and opened to a depot within the town of New Sharon:

And provided further, That no part of said tax shall become due and payable if said railroad Co. fail to fully complete said railroad to and in said town of New Sharon on or before May 11th, 1882.

30 EXHIBIT "E."

STATE OF IOWA, } *ss:*
Mahaska County, }

To the board of supervisors of Mahaska county, Iowa:

We, the undersigned, tax payers of Prairie township, protest against the levy of the tax of 3 per cent. in aid of the New Sharon Coal Valley and Eastern R. R. Co.

We give notice that the petition for submission —— vote was not signed by a majority of the resident freehold tax payers, and that the election was not carried by a majority of the legal votes of the electors, and that we propose to contest the said tax and levy of the same.

J. N. H. CAMPBELL.
A. L. SHANGLE.

31 EXHIBIT "F."

Articles of Incorporation of the New Sharon Coal Valley and Eastern Railroad Company.

Articles of incorporation of the New Sharon Coal Valley and Eastern Railroad Company. Filed for record Dec. 6, 1879, at 12.30 p. m. Recorded Dec. 10, 1879, No. 2 of incorporation record, page 127.

Article I.

SEC. 1ST. The name of this association shall be The New Sharon Coal Valley and Eastern Railroad Company.

SEC. 2ND. The following-named persons shall constitute the incorporators of said railroad company, viz: David Morgan, H. J. Vail, Geo. Carson, and A. C. Wilkins.

Article II.

SEC. 1ST. The following-named incorporators shall constitute a board of directors until the first meeting of the stockholders,
32 as hereafter provided for, viz: David Morgan, president; H. J. Vail, secretary; Geo. Carson, treasurer; Charles H. Kramer, and S. B. Lawrence.

Article III.

SEC. 1ST. The general place of business shall be at New Sharon, Mahaska county, Iowa.

SEC. 2ND. The object of the association shall be to lay out, locate, build, equip, and operate a railroad from New Sharon to any selected point on the Mississippi river and in the State of Iowa, and also to extend said road west to the Missouri river or to the west line of the State of Iowa; to build, equip, and operate all necessary or desirable branches to said main line, including all switches, turnouts, side tracks, etc.

Article IV.

SEC. 1ST. The capital stock shall be ($150,000) one hundred and fifty thousand dollars, which may be increased by a two-thirds vote of the directors of the company to any amount not exceeding ($500,000.00) five hundred thousand dollars, and of which in-
33 creas- of stock due notice shall be given.

SEC. 2ND. The capital stock shall be divided into shares of ($100) one hundred dollars, the full amount of which is due and payable at time of subscribing for said stock, until the sum of ($1,500.00) one thousand five hundred dollars shall have been subscribed.

SEC. 3RD. Five per cent. of all capital stock subscribed, except the first fifteen hundred dollars, shall be payable at time of subscribing, the remainder at the call of the board of directors.

Article V.

SEC. 1ST. The duration of this company shall be for fifty years, with right of renewal.

SEC. 2ND. The company shall have right of perpetual succession, and the right to sue and to be sued by its corporate name; to have a common seal, and to render the interests of its stockholders transferable.

Article VI.

SECT. 1ST. The private property of the stockholders shall
34 be exempt from the liability of the debts of the company.

Article VII.

SEC. 1ST. The company shall have power to make contracts, to acquire and hold property, and to transfer the same, including realty.

Article VIII.

SEC. 1ST. The directors of this company shall consist of five persons, stockholder-, chosen for one year, at the first meeting of the stockholders. No one, however, shall vote at such meeting unless he has taken at least one share of the capital stock and complied with the terms of subscription as specified in article four.

Article IX.

SEC. 1ST. The board of directors, at their first meeting, shall elect by ballot one of their own number president of the company, who shall hold his office one year and until his successor has been elected. Also, the board may elect such other officers as it thinks proper.

SEC. 2ND. The board of directors may adopt such by-laws as may be deemed necessary for the best interest of the company.

35

Article X.

SEC. 1ST. The indebtedness of the company shall not exceed ($100,000) one hundred thousand dollars at any one time.

Article XI.

SEC. 1ST. These articles may be changed or amended by a two-third vote of all the stockholders in interest at a regular meeting of the stockholders, or at a meeting called by the president, except article six, which shall never be changed.

SEC. 2D. At all meetings of the stockholders one vote may be given for each share of paid-up stock, and in every case where a vote is necessary, or an expression of the stockholders be desirable, it must be taken according to their individual interest in stock.

Article XII.

SEC. 1ST. The president, with the approbation of a majority of the board of directors, shall have power to contract with any person or persons for work, material, right of way, and for all other pur-

36

poses for the construction and operation of the road. Also shall have power to sell, lease, or mortgage the road or road-bed and rolling-stock, or any part thereof, to contract with any and all other lines of railroad for the running of trains and the transportation of freight and passengers, and for all matters pertaining to the business of railroading.

Article XIII.

SEC. 1ST. The board of directors shall have power to fill all vacancies accruing in its body.

Article XIV.

SEC. 1ST. The first meeting of the stockholders shall be on the second Wednesday of December, 1879, and annually thereafter.

SEC. 2ND. Should the stockholders fail to elect officers at any regular meeting, as provided for in article eight, the old officers shall hold over until at an adjourned or called meeting their successors shall have been elected.

Article XV.

37 SEC. 1ST. The validity of these articles shall become binding, and the good faith of the parties named in article one be shown by their respective signatures to these articles.

New Sharon, Mahaska county, State of Iowa, December 3rd, 1879.

DAVID MORGAN.
H. J. VAIL.
T. S. THOMPSON.
S. B. LAWRENCE.
A. H. WILKINS.
C. H. KRAMER.
PIERCE RATLIFF.
GEO. CARSON.

STATE OF IOWA, *Mahaska County,* } ss:

Be it remembered that on this 3rd day of December, A. D. 1879, before me, the undersigned, Geo. C. Morgan, a notary public in said county, personally appeared the above-named persons, David Morgan, H. J. Vail, T. S. Thompson, S. B. Lawrence, A. C. Wilkins, C. H. Kramer, Pierce Ratliff, and Geo. Carson, to me personally known to be the identical persons whose names are affixed to the foregoing articles of incorporation as incorporators, and who in my presence subscribed their names to said articles of incorporation, and acknowledged the same to — their voluntary act and deed, and executed for the purposes therein set forth.

38 In testimony whereof, witness my hand and seal notarial, the day and year last above written.

[SEAL.] GEO. C. MORGAN,
Notary Public.

M. M. RICE, *Recorder.*

39 EXHIBIT "G."

Amendment to Articles of Incorporation.

STATE OF OHIO, *Mahaska County:*

New Sharon Coal Valley and Eastern Railroad Company.

Amendment to articles. Filed for record Jan'y 29th, 1881, at 10 o'clock a. m., and recorded January 29th, 1881, 2 Incorporation Book, 151.

I, E. C. Ogg, secretary of the New Sharon Coal Valley and Eastern Railroad Company, do hereby certify that at the regular annual meeting of the stockholders of said company, held at the office of the company in New Sharon, on the second Wednesday of December,

1880, and being the 8th day of said month and year, it was moved by one of the stockholder- of said company that article (8) eight of the articles of incorporation be changed; that the word "five" in the second line of said article be changed to the word nine, making the board of directors consist of nine members instead of five, which was by the meeting adopted, more than two-thirds in interest of the stockholders being present and voting in the affirmative.

Witness my hand and official signature, the day and year first above written.

E. C. OGG,
Secretary of the N. S. C. V. & E. R. R. Co.
S. C. COOK.

STATE OF IOWA, }
Jasper County, } *ss:*

I, John C. Wilson, a notary public in and for said county, hereby certify that on the 28th day of January, 1881, personally appeared before me E. C. Ogg, secretary, and S. C. Cook, two of the directors of the New Sharon Coal Valley and Eastern Railroad Company, and personally to me known to be said persons and directors of said company, and acknowledged the execution of the foregoing instrument, amendment to the articles of incorporation, to be their voluntary act and deed; and that they signed and executed the same for the purpose therein stated.

Witness my hand and official seal, the day and year last above written.

[L. S.] JOHN C. WILSON,
Notary Public in and for Jasper Co., Iowa.

EXHIBIT "H."

New Sharon Coal Valley and Eastern Railroad Company.

Amendment to articles of incorporation. Filed for record May 24, 1881, at 4 p. m., and recorded May 26, 1881, Book of Incorporations No. 2, p. 167.

Know all men by these presents, that at a meeting of the stockholders of the New Sharon Coal Valley and Eastern Railroad Company, held at the office of the company, in New Sharon, Iowa, on the 18th day of May, 1881, pursuant to and in response to a call of the Hon. David Morgan, president of said company, the articles of incorporation of said New Sharon Coal Valley and Eastern railroad were amended as follows, to wit:

1st. That section one of article four of said articles of incorporation shall be amended so as to read as follows: "The capital stock of this company shall be limited to twenty-four thousand dollars per mile of its line of its said road, the issue of said stock to be governed by the board of directors."

2nd. Section one of article nine of the articles of incorporation of said company shall be amended so as to read as follows:

The board of directors of this railroad company shall, at their first meeting, elect by ballot one of their number president of the company, and [he] shall hold his office one year, or until his successor shall be elected; also, the board of directors shall elect and may appoint such other officers, agents, or employees as it may deem proper. The officers, agents, and employees provided for in this section shall hold their offices and trusts for the terms respectively provided herein, or at the pleasure of the board of directors, and such officers, agents, or employees may be removed by said board of directors in its discretion. The above directions, appointments, or renewals may be had at any called or adjourned meeting of said board. Officers elected by the board as herein provided shall
43 enter upon the discharge of their duties immediately upon their election, without further qualification. Agents and employee- shall enter upon and discharge their duties as directed by said board.

3rd. Article ten shall be amended so as to read that the indebtedness of this company shall not exceed sixteen thousand dollars per mile of its line of road. That at the time of meeting of said stockholders, as above set out, that as shown by the books of the company, there had been twenty-one share- of one hundred dollars each issued, and of which more than two-thirds were present and voted for the adoption of amendment to the said articles of incorporation as above set out.

Dated New Sharon, Iowa, May 18, 1881.

Attest:

E. C. OGG,
Secretary of the New Sharon Coal Valley and Eastern Railroad Company.

S. C. COOK,
Director of said Company.

44 STATE OF IOWA, }
Jasper County, } *ss:*

On this 23rd day of May, 1881, personally appeared before me, a notary public in and for said county, S. C. Cook, a director in the New Sharon Coal Valley and Eastern Railroad Company, and acknowledged that he signed and acknowledged the above and foregoing amendment to the articles of incorporation to be his voluntary act and deed, and that he executed and acknowledged the same for the purposes therein stated.

[L. S.]

JOHN C. WILSON,
Notary Public in and for Jasper County, Iowa.

45 EXHIBIT "I."

Chicago, Burlington and Pacific Railroad Company. Change of name from New Sharon Coal Valley and Eastern Railroad Co. Filed for record December 28, 1881, at 12 o'clock m., and record[ed] in Incorporation Book 2, p. 203, December 29, 1881.

STATE OF OHIO, *Mahaska County.*

Know ye, that at the annual meeting of the stockholders of the

New Sharon Coal Valley and Eastern Railroad Company, held at the office of the company, at New Sharon, Iowa, on the 18th day of December, 1881, the following proceeding were had: After meeting was called to order more than two-thirds of the stock issued was found to be present, to wit: It was moved by O. C. Meridith, a stockholder in said company, that the name of the New Sharon Coal Valley and Eastern Railroad Company be changed to the Chicago, Burlington and Pacific Railroad Company, and by that name
46 shall sue and be sued, and have all the like powers of the New Sharon Coal Valley and Eastern Railroad Company; and upon complying with section 1273 of the Code of 1873 of Iowa said corporation shall, by its new name, be entitled to all the rights, powers, franchise-, and immunities that it possessed under the old name, and by the new shall be liable upon all contracts and obligations of every kind and description entered into, by, or binding upon said corporation by or under its old name, to the same extent and manner as if no change in the name of said corporation had been made, as provided by section 1273, Code of 1873, laws of Iowa; and that article one of the articles of incorporation of New Sharon Coal Valley and Eastern Railroad Company be amended by striking out of said article the words "The New Sharon Coal Valley and Eastern Railroad Company," and inserting in its place the Chicago, Burlington and Pacific Railroad Company. Upon
47 a call of the list of the stockholders, as shown by the books of the company, O. C. Meridith, owner of one share, voted in the affirmative; S. C. Cook, owner of one share, voted in the affirmative; E. C. Ogg, the owner of one share, voted in the affirmative; H. F. Stone voted 1,012 shares in the affirmative; total number of shares issued, 1,028, of which 1,015 voted in the affirmative. The motion was declared by the president to be carried.

E. C. OGG,
Secretary of said Company.
S. C. COOK,
President of said Company.

STATE OF IOWA, }
Jasper County, } *ss:*

We, E. C. Ogg and S. C. Cook, being sworn, depose and say: That E. C. Ogg is secretary of the New Sharon Coal Valley and Eastern Railroad Company and S. C. Cook is president of said company, and that the stockholders of said company assented to the change in the name of said New Sharon Coal Valley and Eastern Railroad Company to the Chicago, Burlington and Pacific Railroad Company.

S. C. COOK,
President of said Company.
E. C. OGG,
Secretary of said Company.

48 STATE OF IOWA, }
Jasper County, } *ss:*

On this 26th day of December, 1881, before me, a notary public

in and for said county, personally came before me E. C. Ogg and S. C. Cook, personally to me known to be [the] identical persons whose names are subscribed to the foregoing amendment to the articles of incorporation of the New Sharon Coal Valley and Eastern Railroad Company, and acknowledge the execution of the same to be their voluntary act and deed, and that they executed the same for the purposes herein stated, and at the same time subscribed and sworn to before me, and in my presence, to the above affidavit.

Witness my hand and official seal, the day and year last above mentioned.

[SEAL.] DANIEL RYAN,
Notary Public in and for Jasper County, Iowa.

Found in book No. 2, page 203, in the Incorporation Record of Mahaska county, Iowa.

49 STATE OF IOWA, } ss:
Mahaska County, }

I, the undersigned recorder of said county, hereby certify the above and foregoing to be a full and perfect copy of the record of the articles of incorporation of the New Sharon Coal Valley and Eastern Railroad Company, and amendments thereto, as the same remains in book No. 2, page- 127, 157, 167, & 203 of the records of Mahaska county, in my office.

Witness my hand, at office in Oskaloosa, Iowa, the 26th day of January, 1884. M. M. RICE,
Recorder of Mahaska County, Iowa.

[Endorsed:] James M. Drennen *et al. vs.* Thos. Graham *et al.* Petition in equity. Filed Mar. 27, 1883. D. R. Moore, clerk. 3383. 161, 231. $1.50 paid by Blanchard & Williams & G. C. Morgan, att'ys for pl't'ff.

(Endorsed:) 2042. Eq. J. M. Drennen *et al. vs.* Thomas Graham *et al.* Transcript from circuit court Mahaska Co. Filed May 13, 1884. Ed. R. Mason, clerk.

50 In the District — of the State of Iowa, in and for Mahaska County. May Term, A. D. 1883.

JAMES M. DRENNEN, W. L. MCALLISTER, for Themselves and for the Benefit of all the Tax Payers of Prairie Township, Mahaska County, Iowa,

vs.

THOS. GRAHAM, HUGH CATHCART, PLUMMER EDWARD, Trustees of said Township; John H. Warren, Treasurer of Mahaska County, Iowa; Chicago, Burlington and Pacific Railroad Company, and Alfred Sully.

To Thomas Graham, Hugh Cathcart, and Plummer Edwards, trustees of Prairie township, Mahaska county, Iowa; John H. Warren, treasurer of said county; The Chicago, Burlington and Pacific Railroad Company, and Alfred Sully:

You are hereby notified that on or before the 24th day of

April, 1883, a petition of above-named plaintiffs will be filed in the office of the clerk of said district court of the State of
51 Iowa, in and for Mahaska county, claiming of you that the tax voted by Prairie township, Mahaska county, Iowa, in aid of the New Sharon Coal Valley and Eastern railroad on the eleventh day of May, 1880, be adjudged and decreed null and void, and not collectable, for the reasons therein stated, and praying that an injunction issue restraining and enjoining said township trustees from certifying to the county treasurer of said county, that the conditions required of the railroad company and set forth in the notice for special election, at which the tax was voted, have been complied with, and also restraining said Chicago, Burlington and Pacific Railroad Company, its successors and assigns, and the said John H. Warren, county treasurer, and his successors, and also the defendant, Alfred Sully, from in any manner endeavoring to collect said tax, or any part thereof, or from endeavoring to procure the certificate aforesaid from the township trustees of said
52 Prairie t'p, and that upon the final hearing of such injunction or one in accordance with the prayer of said petition be made perpetual, and for other relief, and that unless you appear thereto and defend before noon of the second day of the May term of said court, which will commence on the first Monday of May, 1883, default will be entered against you and judgment and decree rendered thereon, as prayed for in said petition.

BLANCHARD & WILLIAMS &
G. C. MORGAN,
Att'ys for Plaintiffs.

We, the undersigned, hereby accept due and legal service of the within notice, and waive a copy of the same, this 20th day of March, 1883.

THOMAS GRAHAM.
PLUMMER EDWARDS.
HUGH CATHCART.
JOHN H. WARREN.

STATE OF IOWA, }
Mahaska County, } *ss:*

I received the within notice on the 25th day of March, 1883,
53 and served the same on E. C. Ogg, of the C. B. & P. R. R. Co., by delivering to him a copy of the within notice, and offering to read the same to him, he wa-ving the reading of the same on the 29th day of March, 1883, in Newton, Jasper county, Iowa.

J. L. HUNTER,
Sheriff of Jasper County, Iowa.

Fees:

Service	50
Copy	50
Mileage	10
	$1 10

54 In the District Court of the State of Iowa in and for Mahaska County. May Term, 1883.

JAMES M. DRENNEN, W. L. MCALLISTER, C. H. KRAMER, M. D. BURKET, J. W. Bowdle, Osman Watland, H. M. Whitacre, H. C. Gallaher, A. Cadwallader, I. N. Penland, J. L. Sander, J. E. Starker, F. A. Winder, Chas. Freighly, J. S. Clements, Geo. A. Roberts, O. G. Knudson, S. Janney, Wm. Burkes, A. Rockwell, L. Garner, John Versteeg, G. W. Carrell, Kalbach & Co., Kalbach Sons & Co., I. Bowdle, D. Fessler, A. J. Winder, John Nicholson, G. B. Gatlin, Wm. Widdows, J. S. Ransdell, David Steen, H. T. Wright, O. Wildman, David Stanton, Robert Thomas, J. S. Beal, Vickars & Crawford, S. Vickars, F. E. Crawford, P. W. Phillip, O. Flemming, A. Hamblen, J. R. Jackson, C. T. Bowen, Thomas Watland, J. Andre, E. C. Hull, A. Ridpath, Plaintiffs,

against

THOS. GRAHAM, HUGH CATHCART, & PLUMMER EDWARDS, Trustees of Prairie Township, Mahaska County Iowa; J. H. Warren,
55 Treasurer of said County; The Chicago, Burlington, & Pacific Railroad Comp'y, and Alfred Sully, Defendants.

Plaintiffs make the following amendment to their petition:

1st. Plaintiffs aver that for the purpose of inducing certain tax payers and voters of said Prairie township to work and vote for the said tax the said New Sharon Coal Valley and Eastern Railroad Company, by its president, directors, and authorized agents, agreed to with, and promised certain of, the voters and tax payers of said Prairie township, that if they, the said voters, would vote for the said tax and use their influence to induce other voters of said township to vote for the said tax the said railroad company would hold them harmless against any liability, by reason of the voting
56 of said tax, and would give them full receipts against their tax or cause the same as to them to be cancelled and abated on the tax books of the county, and that the said railroad company would grant and secure to said voters immunity against said tax if voted.

2nd. That by reason of said representations, and induced by said agreements and promises, certain voters of said Prairie township did vote for said tax, and did use their influence to induce other tax payers and voters of said township to vote for the said tax, and that the said votes and influence procured and induced by the representations, agreements and promises aforesaid, were operative in carrying the said tax, and that the said votes and influence would not have been cast for said tax had said representations, agreements, and promises not been made, and that the said tax would not
57 have been carried without the votes and influence, fraudulently procured, as aforesaid, and the same was a fraud upon the voters of said township.

3rd. Plaintiffs further aver that David Morgan, the president of the said railroad company, H. J. Vail, the secretary of the said company, and other members of said company, and its author-

ized agents, with the consent and approbation of and by the order of the said railroad company and its board of directors, did, at various public meetings held prior to the voting of the said tax, called for the purpose of making representations to induce the voters of said township to vote for said tax, falsely and fraudulently represent that the said line of railroad proposed to be aided by said tax would be built from New Sharon to the East, would furnish to the people of Prairie township increased and additional railroad facilities, would be
58 an independent competing line from New Sharon to the East, or from the East to New Sharon, and that arrangements had been made with other persons or corporations to furnish the money necessary to build the said line of railroad from the East to New Sharon; that the said voters of Prairie township, relying on said representations and being induced by the said representations to believe that the said line of road when built would afford them increased and additional railroad facilities, and would be an independent competing line from the East to New Sharon, voted the said tax by a majority of three votes of the votes cast at said election, and that said tax would not have been voted had said false and fraudulent representations not been made.

4th. That after the said election was held and the said tax was voted as aforesaid, to wit, some time in the spring of 1881,
59 the said railroad commenced to work on the proposed railroad line from New Sharon in said Prairie township to the East, and built and nearly completed some ten miles of grade from New Sharon in an easterly direction, but that sometime in the month of March, 1882, the work on said grade from New Sharon to the East was stopped, the said grade abandoned, and the line of said railroad changed by using the Central Iowa railway track from the said town of New Sharon for a distance of twelve miles to the city of Oskaloosa, and building east from the said city of Oskaloosa instead of from the said town of New Sharon; that plaintiff did not know of such change until on or about the 10th day of May, 1882, and that on or about the — day of ——, 1881, the said New Sharon Coal Valley and Eastern railroad, now the Chicago, Burlington and Pacific Railroad Company, with all its rights and franchises, except the said grade east from New Sharon, was sold to the Central
60 Iowa Railway Company, which company now own, control, and operates the same, and that no road whatever was built from New Sharon to the East, nor from the East to New Sharon or to said Prairie township; that no independant competing line whatever was built to the said Prairie township, and that the people of said Prairie township have no better or increased railway facilities than they had before the said tax was voted, and that the said tax would not have been voted had the said line of said railroad been changed aforesaid or the said railroad sold and transferred as aforesaid before the said election.

5th. Plaintiffs further state that since the commencement of this action the defendant herein, Alfred Sully, has commenced an action in this court against the defendants herein, Thos. Graham, Hugh Cathcart, and Plummer Edwards, who are the trustees of said

61 Prairie township, by which he seeks to compel them to certify to the country treasurer that the conditions required of said railroad company, and set forth in the notice for special election, at which the tax was voted, have been complied with. That the questions involved in this action cannot be fully tried and determined in said action, and plaintiffs have not an opportunity to defend said action, and their rights cannot be fully protected in said action; that if the said trustees should make such a certificate the county treasurer would proceed to enforce collection of said tax, and the railroad company, or the said Alfred Sully, would draw said taxes so collected or received by such treasurer, and the plaintiffs would thereby be deprived of their rights and of the remedies sought to be enforced by this action; that if said Sully is allowed to proceed with said action, the plaintiffs will be greatly wronged and
62 injured, and they will be defrauded of the opportunity to hear all of the questions involved in this action determined in a court of equity, and they have no complete or adequate remedy at law; that the right of said Sully, whatever it may be, can be fully determined, and he can have all of such rights adjudicated and preserved in this action.

Sixth. Plaintiffs therefore pray that a temporary injunction may issue, as prayed in their original petition; and, in addition to the prayer in the original petition, they ask that defendant, Alfred Sully, may be restrained and enjoined from prosecuting said suit, and from taking any further step therein, and that his employees, agents, and attorneys may be likewise restrained and enjoined from prosecuting said action until this suit is determined, and for such other
63 and further relief as plaintiffs may show themselves equitably entitled to.

BLANCHARD & WILLIAMS, &
GEO. C. MORGAN,
Att'ys for Pl'ff.

I, G. C. Morgan, being duly sworn according to law, on oath say: That I am one of the attorneys in the above-entitled action; that I am also a resident and tax payer of said Prairie township; that I have heard the foregoing amendment to the petition read and know the contents thereof, and I have better and fuller knowledge of the matter alleged therein than has any one of the plaintiffs, and I say that the matter and things alleged in said amendment to the petition are true, as I verily believe.

GEO. C. MORGAN.

Subscribed and sworn to before me and in my presence by the said G. C. Morgan, this 30th day of April, 1883.

[SEAL.] L. C. BLANCHARD,
Notary Public.

64 [Endorsed:] James M. Drennen *et al. vs.* Thos. Graham *et al.* Amendment to petition. Filed Apr. 30, 1883. D. R.

Moore, cl'k. H. P. Weaver, d'p'y. B. & W. & G. C. Morgan, att'ys for pl't'ffs.

65 STATE OF IOWA, } ss:
Mahaska County, }

Circuit Court. Oct. Term, 1883.

JAMES M. DRENNEN *et al.* }
vs. } Injunction.
THOS. GRAHAM *et al.* }

We, James M. Drennen, C. H. Kramer, W. L. McAllister, *et al.*, as principal, and H. J. Vail, as surety, are held and firmly bound unto Thos. Graham, Hugh Cathcart, P. Edwards, J. H. Warren, C., B. & P. R'y Co., Alfred Sully, defendants in the above cause, in the sum of two thousand dollars; for the payment of which we bind ourselves and legal representatives.

Executed by us this 31st day of August, A. D. 1883.

The condition of the above bond is such, that whereas the said plaintiffs have caused to be issued out of the office of the clerk of the circuit court of said county a writ of injunction in a certain cause pending in said court, wherein James M. Drennen *et al.* are
66 complainants and the said Thos. Graham *et al.* are defendants:

Now, if the said plaintiffs shall pay the said defendant all the damages which he may sustain by reason of the wrongful sueing out of said injunction, then this obligation to be void; otherwise to remain in full force.

W. L. McALLISTER.
JAS. M. DRENNEN.
C. H. KRAMER.
H. J. VAIL, *Surety.*

Examined and approved by me, this 13 day of September, A. D. 1883.

D. R. MOORE,
Clerk Circuit Court.

I, H. J. Vail, do solemnly swear that I have sufficient property unincumbered which is not exempt from execution to pay the above bond.

H. J. VAIL.

Subscribed and sworn before me, this 31st day of August, A. D. 1883.

GEO. C. MORGAN,
Notary Public.

67 STATE OF IOWA, *Mahaska County:*

Circuit Court. October Term, 1883.

To Thomas Graham, Huth Cathcart, and Plummer Edwards, trustees of Prairie township, Mahaska county, Iowa, and their successors in office; John H. Warren, treasurer of Mahaska county, Iowa, and your successor in office; the Chicago, Burlington and Pacific Railroad Company and your successors and assigns, and Alfred Sully:

Whereas by order of the Honorable W. R. Lewis, judge of the circuit court of the State of Iowa, made upon a certain application for a writ of injunction, in a cause wherein James M. Drennen and others are plaintiffs and Thomas Graham and others are defendants, on the 22nd day of August, A. D. 1833, it was ordered by said court that a writ of injunction shall issue under the seal of the circuit court of said county to restrain you, the said township trustees of said Prairie township, and your successors in office, from cer-

68 tifying to the county treasurer of Mahaska county, Iowa, that the conditions required of the railroad company (to wit, the New Sharon Coal Valley and Eastern Railroad Company, and its successor, the Chicago, Burlington and Pacific Railroad Company) and set forth in the notice for the special election at which the tax was voted (namely, a tax of three per cent. voted by the said Prairie township to aid in the construction of the New Sharon Coal Valley and Eastern railroad, on or about the 11th day of May, 1880) have been complied with; also restraining you, the said Chicago, Burlington and Pacific Railroad Company, and your successors and assigns; and also you, John H. Warren, county treasurer aforesaid, and your successor in office, and you, Alfred Sully, from in any manner endeavoring to enforce the collection of the said tax; and also you, the said Alfred Sulley, and your agents, employers, and attorneys, from prosecuting a certain suit now pending in the circuit court of Mahaska county, Iowa, wherein Alfred Sully is plaintiff and Thoma- Graham,

69 Hugh Cathcart, and Plummer Edwards, trustees of said Prairie township, are defendants, until the final hearing of this cause;

And whereas a bond has been *has been* filed and approved by me in conformity with the order of said court:

These are, therefore, to command you, the said parties above named, that from and after the receipt and notice of this writ you do not any of the things above commanded not to do, and that you refrain from doing any of said things as commanded aforesaid in this writ until further ordered by the circuit court of said county to the contrary, and hereof fail not under the penalty of the law.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in Oskaloosa, Iowa, this 13th day of September, A. D. 1883.

[SEAL.]

D. R. MOORE,
Clerk of said Court.

70 STATE OF IOWA, } ss:
Mahaska County, }

This writ of injunction came to hand on the 14th day of September, 1883, and on the 18th day of September, 1883, I served it on John H. Warren, treasurer, in Oskaloosa T'p, by delivering to him a copy of same; he wa-ved reading; and on the 19th day of Sept., 1883, I served it an Hugh Cathcart, in Prairie T'p, by delivering to him a copy of same; he wa-ved reading; and on the 20th day of Sept., 1883, I served it on J. G. Hammond, appointed to fill vacancy caused by death of Thomas Graham, in Prairie township, Mahaska county, Iowa, by delivering to him a copy of same; he wa-ved reading.

MARQUIS BARR,
Sheriff of Mahaska Co., Iowa.

Service	$2 00
Copies	2 40
Mileage	1 40
	$5 80

71 STATE OF IOWA, } ss:
Jasper Co., }

Received this writ Sept. 26th, 1883; served same on C., B. & P. R'y Co., by serving on S. C. Cook, as president of said R'y Co., on the 29th day of September, in Newton T'p, Jasper Co., Iowa, by offering to read and delivering to him a copy of within notice; he wa-ved reading of said writ.

(Signed) J. C. HUNTER,
Sheriff of Jasper Co., Ia.

72 *Motion to Strike Parts of the Petition and Amendment Thereto and for More Specific Statement.*

In the Circuit Court, State of Iowa, Mahaska County. October Term, A. D. 1883.

JAMES M. DRENNEN *et al.*

v.

THOMAS GRAHAM *et al.*, Trustees; ALFRED SULLY *et al.*

Now come the defendants, The Chicago, Burlington & Pacific Railroad Company and Alfred Sully, and move the court to strike out the following designated parts of the original petition and amendment thereto for the reasons stated herein.

I.

To strike out all of the names of plaintiffs but one, because there is no community of interest in the subject-matter of this ac-
73 tion such as to entitle them to maintain a joint action.

2nd. To require the plaintiffs to elect which one of their number shall be retained as the plaintiff, and to strike out all of the remainder, because the plaintiffs have no such common interest in

this suit as to entitle them to join therein, and because their interests are several, separate, and distinct in the subject of this action.

II.

To strike out of the first paragraph of the petition all of the said paragraph commencing with the word "and," at the end of the third line, to the end of said paragraph, because—

1st. Because "all of the other tax payers" are not parties to this suit.

2nd. Because this action cannot be maintained for persons who are not parties thereto and named therein as either plaintiffs or defendants.

3rd. Because such "other tax payers" have no such common interest in the subject-matter of this action as to be joined therein.

74 4th. Because persons who are not parties to the suit are not bound by the decision of the court therein

III.

To strike out the eighth paragraph of the petition, because—

1st. The matters stated in said paragraph are immaterial, irrelavant, redundant, and incompetent.

2nd. Because the board of supervisors, to whom said alleged notice is addressed, are not parties to this action.

3rd. Because the board of supervisors have adjudicated the question of the levy of the tax and passed upon the sufficiency of said protest.

4th. Because these defendants are not affected thereby.

IV.

To strike out the ninth paragraph of the petition, because—

1st. The matters therein stated are irrelevant, immaterial, incompetent, and redundant.

2nd. Because the articles of incorporation of the New Sharon

75 Coal Valley and Eastern Railroad Co. are in no manner connected with the subject-matter of this action, and are matters of evidence.

3rd. The plaintiffs set out a written contract between the railroad Co. and the township of Prairie, upon which the tax was voted, and they are limited to the terms of said written contract.

V.

To strike out the tenth paragraph of the petition, because—

1st. The matters therein stated are irrelevant, immaterial, redundant, and incompetent.

2nd. Because the matters pleaded in said paragraph have no connection with the subject-matter of this action, and pertain wholly to the private business of the railroad Co., and are matters of evidence.

VI.

To strike out the eleventh paragraph of the petition—

1st. Because the matters therein stated are irrelevant, immaterial, incompetent, redundant, and a matter of evidence.

76

VII.

To strike out the twelfth paragraph of the petition, because—

1st. The matters alleged in said paragraph are immaterial, irrelevant, redundant, incompetent, and a matter of evidence.

2d. All matters of negoti-tion between David Morgan, or the directors of the railroad Co., and the citizens and tax payers of said Prairie township, prior to the election and voting of the tax, were merged in the written contract contained in the notice of election.

3rd. Because the representations made by any of the directors or officers of the railroad Co. would not bind the defendant, Alfred Sully, without actual notice thereof.

VIII.

To strike out the thirteenth paragraph of the petition, because—

1st. The matters in said paragraph alleged are immaterial, irrelevant, redundant, and incompetent.

2nd. Because the mere fact that David Morgan was presi-
77 dent of the railroad Co. did not authorize him to make any statement binding on said Co. outside of the ordinary business of said corporation.

3rd. Because the truth or falsity of the statements alleged to have been made by David Morgan, and by him caused to be published, could have been determined by the tax payers of Prairie T'p prior to said election by the use of ordinary discretion and diligence on the part of said citizens and tax payers.

4th. Because said allegations, if made, would not bind the defendants without actual knowledge thereof.

5th. Because all of said matters of negotiation relative to the voting of said tax were merged in the written contract contained in the notice of the election.

IX.

To strike out the fourteenth paragraph in the petition, because—

1st. The statement therein made is immaterial and irrelevant and redundant.

78 2nd. Because the validity of the tax was not affected by the failure of the clerk to make out and have the certificate recorded at an earlier date.

3rd. Because the township clerk is the agent of the plaintiffs, and they cannot in equity avail themselves of the negligence of their own agent.

X.

To strike out the following-named subdivisions of paragraph fifteen of the petition, because of the following-named reasons:

Subdivision 3rd. Because said subdivision is a mere repetition of subdivision one and two of said paragraph, and is redundant, immaterial, and irrelevant.

Subdivision 4th. Because there is no condition or provision in the notice of election requiring a road to be built from the Mississippi river to New Sharon, and said allegation is therefore immaterial, irrelevant, and redundant.

Subdivision 5th. Because there is no condition or provision
79 in the notice for the special election requiring a road to be built to the Missouri river or west line of Iowa before said tax became due and collectible, and said allegation is therefore immaterial, irrelevant, and redundant.

XI.

To strike out the seventeenth paragraph of the petition, because—

1st. Said paragraph sets out no cause of action, and is immaterial, irrelevant, and redundant.

2nd. Because the statements of said paragraph charge no wrongful act.

XII.

To strike out the twentieth paragraph of the petition, because—

1st. Said paragraph does not allege any matter material to this suit.

2nd. The parties attempted to be brought into this action have no such common interest in the subject-matter of this suit as to entitle them to be made parties.

3rd. The court has non-jurisdiction over parties not named as plaintiff or defendants.

80 XIII.

To strike out the twenty-first paragraph of said petition—

1st. Because the matters therein stated are mere conclusions of fact and of law.

2nd. Because said allegations are immaterial, irrelevant, incompetent, and redundant.

3rd. Because no fact or statement of fact is set out in said paragraph.

XIV.

To strike out the 22nd paragraph of the petition, because—

1st. All the matters therein stated are mere matters of evidence.

2nd. Because said paragraph is immaterial, irrelevant, incompetent, and redundant.

And these defendants further move the court to strike out the following-named parts of the amendment to the petition, to wit:

1.

The first paragraph of said amendment, because—

81 1st. Said paragraph does not allege any material fact, and is, therefore, immaterial, irrelevant, incompetent, and redundant.

2d. Because the railroad company could not be bound by any acts of its officers contravening the law, and said officers were not authorized by said corporation to do any illegal act.

3rd. Said paragraph does not allege that the acts complained of were done under and by the direction of the railroad company, nor that the parties complained of were not acting as individual persons in their private capacity when making the alleged representations.

4th. Said paragraph does not state that said parties making said allegations had any authority from any source to make the same, or that they were acted upon by any person voting at said election.

2.

To strike [out] the second paragraph of said amendment, because—

82 1st. The said statements therein contained are incompetent, immaterial, irrelevant, and redundant.

2nd. Because the contract between the railroad co. and Prairie t'p upon which the tax was voted was in writing, and each party is bound thereby.

3.

To strike [out] the third paragraph of the amendment, because—

1st. All matters of negotiati-ng between the township and the railroad co. were merged in the written contract contained in the petition and notice of the election.

2d. Because said allegations are immaterial, irrelevant, incompetent, and redundant.

4.

To strike out the fourth paragraph of the amendment.

1st. Because all of said matters alleged in said paragraph are immaterial, irrelevant, incompetent, and redundant.

And defendants further say that if upon the hearing of the

83 foregoing motion the court should refuse to strike out paragraph one of the amendment to the petition, then they move the court to require plaintiffs to set out more specifically as follows:

1st. The names of the directors and agents of the railroad co. making the statements complained of or offering inducements to the voters.

2nd. To set out the names of the voters that were influenced by such representations, and voted for said tax because of them.

3rd. Whose tax it was proposed to cancel and abate without payment.

4th. To give the names of the "certain voters" who voted for said

tax and used their influence because of such representations to induce others to vote for said tax, as alleged.

5th. To set out specifically the names of all parties making such representations, to whom made, and of those voters influenced thereby.

LAFFERTY & NEEDHAM &
R. A. SANKEY, *For Def'ts.*

[Endorsed:] James M. Drennen *vs.* Thomas Graham. Motion to strike. Filed Oct. 10, 1883. D. R. Moore, clerk.

84 *Demurrer to Petition.*

In the Circuit Court, State of Ohio, Mahaska County. Oct. Term, A. D. 1883. In Equity.

JAMES M. DRENNER *et al. v.* THOMAS GRAHAM *et al.*

Now come the defendants, The Chicago, Burlington & Pacific Railroad Company, Alfred Sully, and John H. Warren, treasurer, and reserving all their rights under the motion filed by defendants herein, and saving their exceptions to the overruling of said motion in part by the court, file this demurrer to the petition and amendment thereto herein:

1st. Said defendants demur to the eighth paragraph of said petition, because said paragraph alleges no cause of action against these defendants, and because the sufficiency of said notice and of the matters therein stated have been adjudicated by this court and the board of supervisors, to whom the same is addressed.

85 2nd. Said defendants demur to the ninth paragraph of the petition, because said paragraph sets out no cause of action, and because the written contract between the township and the railroad company, upon which the tax complained of was voted, cannot be varied, altered, or enlarged by the articles of incorporation of the railroad co., and because the defence of the plaintiffs to said tax must rest upon said written contract contained in the notice calling said election.

3rd. Said defendants demur to the tenth paragraph of the petition, because it states no cause of action and relates solely to the business of the corporation defendant.

4th. Said defendants demur to the eleventh paragraph of the petition, because it states no cause of action, and states matters in avoidance of the cause of action previously alleged.

86 5th. Said defendants demur to the twelfth paragraph of the petition, because said paragraph alleges no cause of action against the defendants, and because said alleged representations, if made, constitute no defense to the written contract contained in the notice calling the election at which the tax complained of was voted; and because said alleged representations do not amount to a fraud in law.

6th. Said defendants demur to the thirteenth paragraph of the petition, because the statements alleged in said paragraph constitute

no cause of action against defendants, and because said statements, if published as stated, do not amount to a fraud in law,

7th. Said defendants demur to the fourteenth paragraph of the petition, because the matters therein alleged constitute no cause of action against defendants, and because the act or negligence
87 complained of was the act or negligence of the agent of the plaintiff, and they now seek to avail themselves of the negligence or wrongful act of their own agent.

8th. Said defendants demur to the fifteenth paragraph of the petition, because the matters therein stated do not constitute any cause of action against defendants, and because said paragraph does not allege wherein the terms of the notice of the election have not been complied with.

9th. Said defendants demur to the 16th paragraph of the petition, because the matters in said paragraph alleged do not constitute any cause of action or entitle the plaintiffs to the relief demanded, and because said paragraph does not state wherein any of the conditions contained in the notice of the election, at which the tax complained of was voted, have been violated or remain unfulfilled.

88 10th. Said defendants demur to the 17th paragraph of the petition, because said paragraph states no cause of action.

11th. Said defendants demur to the 18th paragraph of the petition, because said paragraph does not state any facts entitling the plaintiffs to the relief demanded.

12th. Said defendants demur to the 20th paragraph of the petition, because said paragraph contains no averment entitling the plaintiffs to the relief demanded, and because these plaintiffs are not entitled to represent persons not parties to the suit.

13th. Said defendants demur to the 21st paragraph of the petition, because said paragraph contains no averments entitling the plaintiffs to the relief demanded, and because said paragraph contains conclusions merely and not a statement of facts.

89 14th. Said defendants demur to the first paragraph of the amendment to the petition, because said paragraph contains no averments entitling the plaintiffs to the relief demanded, and because no authority is alleged on the part of the railroad company authorizing the statements averred to have been made.

15th. Said defendants demur to the 2nd paragraph of the amendment, because said paragraph does not state facts sufficient to entitle the plaintiffs to the relief demanded, and because an agreement by one voter to use his influence with the other voters at an election constitutes no fraud in law.

16th. Said defendants demur to the 3rd paragraph [of the] amendment, because said paragraph does not state facts sufficient to entitle the plaintiffs to the relief demanded, and because the statements
90 complained of were matters of negotiations relative to the tax, and were merged in the written contract contained in the notice of the election.

17th. Said defendants demur to the 4th paragraph of the amendment, because said paragraph does not contain any facts entitling the plaintiffs to the relief demanded.

18th. Said defendants demur to the fifth paragraph of the amendment, because said paragraph does not allege any facts entitling the plaintiffs to the relief demanded.

19th. And said defendants demur to all of said petition, and the amendment thereto, because said petition and the amendment thereto do not contain facts sufficient to entitle the plaintiffs to the relief demanded.

2*d*. Because the petition upon its face shows that the terms
91 of the written contract contained in the notice of election have been complied with by the defendant railroad company.

LAFFERTY & NEEDHAM &
R. A. SANKEY,
For the Defendants.

[Endorsed:] James M. Drennen *et al. vs.* Thomas Graham *et al.* Demurrer to the petition and amendment. Filed Oct. 22, 1883. D. R. Moore, clerk.

92 *Amendment to Petition.*

In Circuit Court of Mahaska County, Iowa. Oct. Term, 1883.

JAMES M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

Now comes plaintiffs and make their petition more specific, in compliance with the order of court, as follows:

Plaintiffs say that they are unable to state the names of all of the directors of said railroad corporation at the date specified, but they aver that such facts were and are well known to the defendants.

They further say that David Morgan was president of said corporation, and made the representations and the promises referred to in the petition.

(2.) Plaintiffs further say that they are unable to give the names of other agents of the corporation who made such representations.

93 3. Plaintiffs further say that they are unable to state the names of those whose tax it was proposed to cancel and abate without payment.

4. Plaintiffs further say that they are unable to give the names of the certain voters who voted for said tax, and used their influence because of such representations to induce others to vote for said tax.

L. C. BLANCHARD &
GEORGE C. MORGAN,
Att'ys for Pl'ffs.

STATE OF IOWA, *Mahaska County:*

I, J. S. Clements, on my oath say: That I am one of the plaintiffs in the above-entitled cause; that I have heard the foregoing petition read, and that all the matters and things therein contained are true, as I verily believe.

J. S. CLEMENTS.

Subscribed and sworn to before me by the said J. S. Clements, at Oskaloosa, Iowa, this 24th day of October, A. D. 1883.

[SEAL.] GEORGE C. MORGAN,
Notary Public.

[Endorsed:] Filed Oct. 24, 1883. D. R. Moore, clerk.

94 *Amendment to Petition.*

In Circuit Court of Mahaska County, Iowa.

JAMES M. DRENNEN *et al. vs.* THOS. GRAHAM *et al.*

Now comes plaintiffs, and by leave of court amend this petition by bringing in the following-named additional parties plaintiffs, viz.: H. J. Vail, Geo. Carson, Geo. C. Morgan and Jonathan Andre, executors of the estate of Thomas Graham, deceased; Martha E. Andre, Orrin Fleming, Alanson Rockwell, L. Garner, George Erdman, Charles Hughes, U. Hamblen, J. R. Jackson, estate of P. Heitsman, dec'd, by J. B. Heitsman, trustee; Thos. Watland, August Sunderland, S. Ellis, H. Maris, G. Briggs, Martha Briggs, E. C. Quaintance, J. B. Hart, G. G. Strom, M. Dysart, C. T. Sexton, T. Cobb, Mahlon Stout, John Morgan, Mary Graham, S. M. Phil-
95 brook, Carroll & Hueston, G. W. Carrell, E. B. Hamaker, Pierce Ratliff, Robert Thomas, M. A. Munsell, Loftus Fox, Richard Hansell, James Quinn, Hiram Holler, J. N. H. Campbell, Allen Godby, Gerard Ryan, James Fisher, A. J. Bartlett, Nicholas Beal, C. Huntz, W. Hibbs, O. G. Knudson, Jacob Harper, Sidney Harper, Joseph Williams, William Harper, I. Kalbach & Son, Kalbach Sons & Company Bank, J. W. Carr, and Mary Crookham, executrix of the estate of Horace Crookham, dec'd.

And said parties hereby unite with the other plaintiffs and ask the same relief as prayed for in the original petition and amendment thereto, and plaintiffs further aver that all of the above-named parties are tax payers in said Prairie township, Mashaska county, Iowa, and have an interest in the matters in controversy the same as the other plaintiffs, and plaintiffs aver that all the matter al-
96 leged and set forth in the petition and amendments thereto are true, and they pray for the same relief as the other plaintiffs.

L. C. BLANCHARD &
GEO. C. MORGAN,
Attorneys for Plaintiffs.

STATE OF IOWA, *Mahaska County:*

I, Geo. C. Morgan, on my oath, say: That I am one of the plaintiffs in the above-entitled cause named in the foregoing petition; that I have heard foregoing petition read, and know the contents thereof, and that all the matters and things therein contained are true, as I verily believe.

GEO. C. MORGAN.

Subscribed and sworn to before me by the said Geo. C. Morgan, at Oskaloosa, Iowa, this 27th day of October, A. D. 1883.

D. R. MOORE, *Clerk.*

97 (Endorsed:) James M. Drennen *et al. vs.* Thomas Graham *et al.* Amendment to petition. Filed Oct. 27, 1883. D. R. Moore, clerk. L. C. Blanchard & Geo. C. Morgan, attorneys for plaintiffs.

98 *Answer of the Defendants, The Chicago, Burlington & Pacific Railroad Company and Afred Sully.*

In the Circuit Court of Mahaska County, State of Iowa. October Term, A. D. 1883. On Equity.

JAMES M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

Now come the defendants, The Chicago, Burlington & Pacific Railroad Company and Alfred Sully, defendants herein, and for answer to the petition of the plaintiffs, and the amendment thereto, reserving all rights under their motion and demurrer, say:

1. That as to whether all of plaintiffs are resident tax payers of Prairie township, Mahaska county, Iowa, these defendants have no sufficient knowledge or information to form a belief, and therefore deny said allegation.

99 Admit the allegations of the second, third, and fourth paragraphs of the petition, except that defendants have not compared Exhibit "A," and cannot state whether it is a true copy of the petition or not.

Admit the allegations of the fifth, sixth, and seventh paragraphs of the petition, except as to the respective exhibits attached, which these defendants have not compared, and connot state whether they are true copies of the originals or not.

Defendants say that as to the matters alleged in the eighth paragraph of the petition, they have neither actual or constructive knowledge, and therefore deny each allegation in said paragraph.

As to the ninth and tenth paragraphs of the petition, defendants say that the articles of incorporation are themselves the best evidence of the objects and purposes of the incorporation and

100 the powers they confer, but deny they are as construed to be in said paragraphs.

Admit that David Morgan was president of the railroad company at the time the tax complained of was voted in Prairie township, as stated in the eleventh paragraph of the petition, but deny that he, "with the approbation of a majority of all the directors," drew the petition and notice for the election, and deny specially and distinctly that he (David Morgan) made any representations inconsistant with the petition and notice of election.

Defendants, in answer to the twelfth paragraph of the petition, say they deny specifically and distinctly each and every separate allegation in said paragraph contained; that it is untrue that David Morgan, with the approbation of a majority of the directors of the railroad company as such directors, made any statements to

101 induce the people to vote said tax. That the railroad company took no part in said election, or in any of the preliminary steps leading thereto. That if any part was taken by any of

the officers, directors, or agents of said railroad company in procuring said election to be held and tax voted, the same was done by such persons as individual citizens, residents, and tax payers of said Prairie township, and in their capacity as such citizens, tax payers, and residents, and entirely distinct, separate, and disconnected from their official relations to said railroad company.

That David Morgan, as president of the railroad company, or as an individual, never made any of the statements in said paragraph contained to induce persons to vote for said tax, and that none of said allegations were made, and the said several allegations of said paragraph are wholly untrue and false.

102 Defendants, answering the thirteenth paragraph of the petition, say that as to whether the matters and things therein stated were published as alleged in a newspaper called "The New Sharon Star," these defendants have no sufficient knowledge or information to form a belief, and therefore deny each of said allegations.

Defendants further say that David Morgan had no connection with said newspaper or control over its columns; was not instrumental in having said article published, and the said article, if published, was done without the knowledge or aid of David Morgan; that said newspaper was owned and edited by a bright, enterprising citizen of Prairie township named Vail, who owned, managed, and controlled the columns of said paper exclusively, and if said article appeared it was published by said Vail as a matter of news

103 in the interest of his newspaper, and for no other purpose, and in other interest; and defendants deny that any of the voters of said Prairie township were influenced or induced to vote either for or against said tax by said publication.

Defendants say to the fourteenth paragraph of the petition that they have no sufficient knowledge or information to form a belief, and therefore deny each allegation of said paragraph; and further say that if said allegations are as stated they are wholly immaterial.

Defendants, answering the allegations of the fifteenth paragraph of the petition, say they deny specifically that "said railroad company has failed and neglected to comply with and perform the terms and conditions contained in said petition for the elec-

104 tion and notice of election aforesaid," and allege that the railroad company have fully and faithfully complied with each of the conditions specified in the notice on which said tax was voted within the time in said notice specified. They deny that said railroad was not built, completed, and operated, and the cars running to a depot in the town of Sharon, in Prairie township, Mahaska county, Iowa, within two years from the day of election.

Admit that the road was not built to the Missouri river from New Sharon, and allege that the notice of election did not require such to be done, but aver that the terms of the notice was fully complied with by building from New Sharon northwesterly through Lynn Grove township to Newton, Iowa.

Aver that a road was built to the Mississippi river, running from

opposite Keithsburg, Illinois, in a northwesterly direction
105 through Iowa to Oskaloosa, thence twelve miles north over the Iowa Central to New Sharon.

Defendants, answering the sixteenth paragraph of said petition, deny that there was only five miles of railroad built within two years from the date of said election, and that the same was not fully completed and operated within said time, and aver that within two years from the date of the election in Prairie township the defendant railroad company had contracted, completed, and put in successful operation a railroad from a connection with the Iowa Central at New Sharon northwesterly about twelve miles, and subsequently completed the same a distance of twenty-eight or thirty miles, said road being operated directly to a depot at New Sharon; and that all allegations in said paragraph in conflict with the foregoing aver-
106 ment, or inconsistent therewith, are untrue and without foundation in fact.

Defendants admit the allegations of the seventeenth paragraph of the petition, except as to "threatening said tax payers with penalties and litigation," which they deny, and aver that they are entitled to the payment of said tax.

Defendants admit, as stated in the eighteenth paragraph of the petition, that they have demanded of the trustees of said Prairie township that they certify to the county treasurer that the conditions upon which said tax was voted have been complied with by the railroad company, and that the defendants were entitled to receive said tax; and defendants deny specifically and distinctly that they, or either of them, or any agent, or person in the employ of either of them, "have corruptly endeavored to persuade them to make said certificate;" and deny all other allegations in said paragraph contained.

Defendants admit that the defendant, Alfred Sully, has
107 some claim to the taxes levied under and by virtue of said special election, as stated in the nineteenth paragraph of the petition, and aver that he is the sole owner of said tax.

Defendants deny each and all of the allegations of the twentieth paragraph of said petition, and deny that it is impracticable to bring all persons interested in this action properly before the court.

Defendants, answering the twenty-first paragraph of the petition, say that they deny each and every allegation in said paragraph contained; deny that the vote in favor of said election was procured by fraud. Deny the insufficiency of the notice in any particular, or that it is void for uncertainty; and all other allegatious of said paragraph. Deny that plaintiffs have no adequate remedy at law; and deny that they are now, or ever have been, entitled
108 to an injuction herein, or any restraining order whatever.

And defendants, answering the first paragraph of the amendment to the petition, say they specifically, distinctly, and separately deny each allegation in said paragraph contained. Deny that the New Sharon Coal Valley and Eastern Railroad Company, by its president, directors, and authorized agents, or any or either of them, "agreed with and promised certain voters and tax payers of said

Prairie township that if they, the said voters, would vote for the said tax, and use their influence to induce other voters of said township to vote for said tax, the said railroad company would hold them harmless against any liability by reason of the voting of said tax, and would give them full receipts against their tax, or cause the same, as to them, to be cancelled and abated on the tax books
109 of the county, and the said railroad company would grant and secure said voters immediat-ly against said tax if voted," and aver that each and all of said allegations are wholly false and untrue, and were so known by plaintiffs to be wholly untrue at the commencement of this action.

And defendants, answering the second paragraph of the amendment to the petition, say that each allegation therein contained is wholly untrue, and they therefore deny each of said allegations, and aver that no agent or officer of the railroad company made any untruthful allegations respecting said tax, or did any act inconsistent with that of good citizenship, or made any allegations inconsistent with the terms and conditions of the notice of election; that any and all charges that any agent or officer of the railroad company,
110 as such, made any false or fraudulent statement to induce persons to vote for said tax, are wholly untrue, and known by plaintiffs to be untrue.

Defendants, answering the third paragraph of the amendment to the petition, say they deny distinctly, specifically, and separately each allegation in said paragraph contained.

Deny that David Morgan, the president of the said railroad company, H. J. Vail, its secretary, and other members of said company, and its authorized agents, with the consent and approbation, and by order of the railroad company and its board of directors, did falsely and fraudulently represent that a railroad would be built from New Sharon to the East, etc. Deny that said railroad company, by its authorized agents of officers, ever authorized any statements
111 to be made to induce persons to vote for said tax, or it, as such company, ever took any part whatever in procuring said tax to be voted, or knew of, or recognized the authority of, any person to act for it respecting the voting of said tax; that if any statements were made by the persons named, they were made as citizens, and not as the officers of any railroad company; but defendants aver that no such statements were made.

Defendants, answering the fourth paragraph of the amendment to the petition, say they admit they have done considerable work, as stated, east and southeast of New Sharon on a contemplated line of road running southeasterly, but deny that said line of road has been abandoned.

Admit that the Chicago, Burlington & Pacific Railroad Company, in May, 1882, sold that part of its line of road constructed
112 and extended from Newton to New Sharon, Iowa, and that part constructed and in process of construction at that time from Oskaloosa southeasterly to the west bank of the Mississippi river, opposite Keithsburg, Illinois, to the Central Iowa Railway Company, and that said latter company is now the owner thereof

and is operating the same, but avers that the sale of said road does not in any way or manner affect the validity of the tax in Prairie township, or is in conflict with any of the conditions on which said tax was voted.

And defendants deny all the other allegations of said paragraph.

Defendants, answering the fifth paragraph of the amendment to the petition, say they admit that defendant, Alfred Sully, has commenced an action against the trustees of Prairie township, to require them to certify said tax to the treasurer of Mahaska county,
113 and aver that said suit is rightfully brought, because said tax is due and collectible, and deny all other allegations in said paragraph contained. And, further answering, these defendants deny each and every other allegation in said petition and amendment not hereinbefore specifically admitted.

II. And defendants, further answering, say that all of the matters pertaining to the sufficiency of the petition and regularity of the same, and all matters pertaining to the regularity, sufficiency, and certainty of the notice of said special election which is complained of herein, were determined and adjudicated by the trustees of Prairie township. And after such determination and adjudication by said trustees, the said notice was published and the election ordered
114 and the result thereof announced.

That some time after the result of said election was announced, and it was known that said tax had been voted, a second and final adjudication was by this court had of all matters happening prior to said election in any way affecting the regularity and validity of the same and of the result of said election, and all allegations and questions of fraud stated and set forth in the petition and amendment thereto in this cause have been fully determined, and finally adjudicated by this court, and are now *res adjudicata.*

That on December 30th, 1880, certain of the citizens of Prairie township, Mahaska county, Iowa, being dissatisfied with the result of the special election as which the tax complained of in this
115 action was voted, and believing the trustees had erred in their adjudication over the matters pertaining to said petition, notice, and election filed in this court, which is a court of general jurisdiction, a petition for a writ of certiorari to have said trustees certify up the record of their proceedings in and about said petition, notice, election, and return thereof for further adjudication, which said petition was by this court granted a writ duly issued to said trustees, and a return to said writ duly made, upon which issue was joined and trial had by this court.

That in said action one A. L. Shangle, a citizen and tax-payer of Prairie township was made plaintiff, and the trustees of said township, John H. Warren, treasurer of Mahaska county, S. B. Waters, auditor of said county, and the defendant railroad company
116 herein, were made parties to said suit and brought into court as defendants thereto. And upon the trial of said cause all of the matters now pleaded in this action were set up, finally determined, and adjudicated, save and except the allegation that the de-

fendant railroad company have failed to comply with the conditions stated in the notice of the election in building its road.

That said cause was, on the 15th day of March, A. D. 1882, tried by this court, and after hearing and trial thereof the issues were found for the defendants, and judgment rendered against the plaintiff for costs of said action, and no appeal has been taken from the judgment and finding of this court or from his decision and judgment in said cause.

A copy of which said pleadings and judgment of this court
117 in said cause is hereto attached, marked Exhibit "A," and made a part hereof.

Wherefore the defendants say the plaintiffs are barred and estopped from maintaining this action, because of said former adjudication.

III. Defendants, further answering, say that at the time the tax was voted in this action complained of by Prairie township, the defendant railroad company had not built any line of road, nor did it own any; but a tax had been voted in Lynn Grove township, Jasper county, Iowa, for a road from New Sharon to said township, and the defendant railroad company intended building from New Sharon to Lynn Grove township to earn said tax, and perhaps further westward or northwest, if aid could be obtained in Prairie township as at other points along the proposed line; and this was the road
118 contemplated and spoken of by David Morgan prior to the election in said township. That at said time no locating survey of any line of road east or west had been made, and that all of these facts were known to all of the plaintiffs and all of the voters of said Prairie township prior to and at the time of said election.

That no false or fraudulent representations were made by any of the parties connected with the railroad company to induce any person to vote for said tax, and that all of the citizens and voters of said township knew that said company had not made any arrangements at that time to build other than as stated herein, and that the conditions in the notice for the election were made as they are because of such facts, all of which were well known and discussed
119 prior to said election by the voters of said township. That the railroad company did not authorize or employ any person to represent it in procuring said tax to be voted or to make any representation in its behalf to induce persons to vote for said tax, that any representation made by any person, a member of said railroad company, were made in the individual capacity of such person as a citizen voter and tax payer of said Prairie township entirely separate from and disconnected with the railroad company. That several persons residing in the village of New Sharon and vicinity were, at the time said election was held, members of the railroad company, and as citizens and residents of said village and vicinity were anxious to assist in its growth and prosperity, and desirous of getting additional railroads to
120 said town, and for that reason and no other said parties cast their vote and influence in favor of said tax. That it is wholly and entirely false that any person was authorized by the railroad company to promise an abatement or cancellation of any voter's tax,

or that any such promises were made by or on behalf of said company to induce any person to vote for said tax.

IV. Defendants, further answering, say that the railroad company have in good faith complied with the terms and conditions of the notice of the election; that within the two years mentioned in said notice of election said railroad company did build a railroad to a depot in said town of New Sharon, said railroad running from a depot in said town of New Sharon northwesterly to Lynnville and to Newton, in Jasper County, Iowa; that the building of
121 said road was in all respects a strict legal compliance with the terms of the notice, and was built on the faith of the taxes voted to said road; that in earning said tax the defendant railroad company expended a much larger sum than said tax; that said road was built, completed, and operated to a depot in the town of New Sharon within two years from the day of election, and aver since its completion the cars are daily running thereon to a depot in the said town of New Sharon.

V. These defendants, further answering, say that the defendant Alfred Sully is the sole owner of tax in controversy in this action; that said tax amounts to the sum of fourteen thousand dollars; that Alfred Sully became the owner of said tax by virtue of an
122 assignment thereof to him from the railroad company for money advanced by him in the construction of the road; that prior to accepting said assignment said Sully examined or caused to be examined the records of said railroad company and the contract mad- by it for the construction of the road, for the purpose of learning whether any defect existed to the title to said tax, and whether any action had been taken by said company in relation to the voting or influencing the voting of any tax, or of said railroad company having taken any part therein, or mad- any promises to abate or cancel any person's tax, and that the title to said tax was valid in said railroad company, and the assignment was after such examination accepted by said Sully; that said Sully had no knowledge at the time he advanced the money to build the road,
123 or at the time of accepting the assignment of said tax, of any of the alleged representations claimed in the petition herein to have been made to induce the voting of said tax, and never knew or heard of the same until after the petition and amendment herein was filed, and until long after he had become the sole owner of said tax. A copy of which said assignment is hereto attached, marked Exhibit "B," and made part hereof.

Wherefore defendants say the plaintiffs are estopped from setting up any allegation of fraud to the collection and payment of said tax.

VI. Defendants, further answering, and by way of cross demand, say that their co-defendants, the trustees of said Prairie township, have entered into a combination with the plaintiffs in this
124 action to defeat the collection of said tax, and payment thereof; that they have refused to perform their official duty as trustees although they well knew that the defendant railroad company has earned said tax, and is justly entitled thereto; that

said defendants colluded with the plaintiffs for the purpose of having the writ of injunction issued against them, and to prevent the defendant Sully from obtaining a writ of mandamus to compel them to perform their official duty.

Wherefore defendants pray that said writ of injunction be dissolved as to said trustees, and that they be required to proceed with the mandamus action pending in this court.

Defendants further pray that this action be dismissed upon its merits, that the writ of injunction issued herein be dissolved, and that they have judgment against the plaintiffs for the costs of this action.

(Signed) LAFFERTY & NEEDHAM &
R. A. SANKEY,
Att'ys for Def'ts.

125 STATE OF IOWA, *Jasper County:*

I, S. C. Cook, being first duly sworn, depose and say: That I am the president of the defendant Chicago, Burlington & Pacific Railroad Company, and have been such president since the 18th day of July, A. D. 1881, and previous thereto was a director in said company; that I have personal knowledge of the matters set forth in the foregoing answer, and have heard said answer read, and know the contents thereof, and the several affirmations, denials, and allegations therein contained are true, as I verily believe.

(Signed) S. C. COOK.

Subscribed and sworn to before me, and in my presence, by S. C. Cook, this 23rd day of October, A. D. 1883.

[SEAL.] (Signed) E. C. OGG,
Notary Public.

126 STATE OF IOWA, *Jasper County:*

I, R. A. Sankey, being sworn, say: That I am the attorney for Alfred Sully, one of the defendants herein; that I make this affidavit for and on behalf of said Alfred Sully, because he is a non-resident, and is now absent from the State of Iowa, and unable to be present in time to make this affidavit; that I have personal knowledge of the matters stated in the fifth count of the answer, and made the examination of the records of the railroad company mentioned therein, and know of my own knowledge that the several allegations in said part of this answer are true.

(Signed) R. A. SANKEY.

Subscribed and sworn to before me, by R. A. Sankey, this 23rd day of October, A. D. 1883.

[SEAL.] (Signed) E. O. OGG, *Notary Public.*

Filed Oct. 29, 1883. D. R. MOORE, *Clerk.*

127 "EXHIBIT A."

Motion.

STATE OF IOWA, *Mahaska County:*

Circuit Court. October Term, 1881.

A. D. SHANGLE *v.* TRUSTEES, etc.

Now comes plaintiff and moves to strike from the files and quash each of the 2nd, 3rd, and 4th paragraphs of the amendment to the return filed November 10th, 1881, for the reason—

1st. The same is not made by the trustees, but by the president of the railway company.

2nd. The railway company or its president, have no right to make an official return to the writ of certiorari by the trustees of Prairie township.

3rd. The return is not signed by said trustees, or by either of them.

4th. The return of the president of the railway company is not a compliance with the requirements of the writ or of the order of the court.

128 5th. The return is not verified as required by order of the court.

6th. The return is not a compliance with the order of the court.

7th. The return is not and does not purport to be an official return to the writ of certiorari.

8th. The president of the railway company usurp the functions of the township trustees in making their return for them.

(Signed) JOHN LACY,
Att'y for Pl't'ff.

Filed Nov. 1, 1881. D. R. MOORE, *Clerk.*

129 EXHIBIT "A."

STATE OF IOWA, *Mahaska County:*

Be it remembered that the following proceedings were heard in the circuit court in and for said county and State, at the October term, 1881, on the 14th day of said term, it being November 1st, 1881, to wit:

A. L. SHANGLE
vs.
BOARD OF TRUSTEES OF PRAIRIE TOWNSHIP. } On Certiorari. No. 3538.

And now, on this day, comes the plaintiff, by his attorneys, and moves the court to quash the return of the writ for the reasons set out in the motion on file, and thereupon this cause came on to be heard upon said motion, the plaintiff appearing by Messrs. J. F. & W. A. Lacy and the defendant appearing by Messrs. Lafferty & Johnson and M. E. Cutts, Esqs., and the motion is submitted

130 to and sustained by the court, and it is ordered by the court

that a new return to the writ in this cause be made under oath, and that the same be made by Monday morning next.

And afterwards, to wit, on the 15th day of March, 1882, it being on the third day of the March term, 1882, the following proceedings were had in said above-entitled cause, to wit:

A. L. SHANGLE
v.
BOARD TRUSTEES PRAIRIE T'P. } On Certiorari. No. 3538.

And now, on this day, this cause came on for hearing, and by agreement of parties, and this cause is called peremptorily and cause tried to the court.

And the court being fully advised in the premises, it is
131 ordered and adjudged by the court that the defendants do have and recover of and from the plaintiff, A. L. Shangle, the costs of this action taxed at $——.

STATE OF IOWA, *Mahaska County:*

I, D. R. Moore, clerk of the circuit court in and for said county, hereby certify that the foregoing is a true, full, and correct transcript of the record entries in the above-entitled cause and the whole of the record entries in said cause.

Witness my hand and the seal of said court this November 3rd, 1883.

[SEAL.] (Signed) D. R. MOORE, *Clerk.*

132 In the Circuit Court of Mahaska County, State of Iowa.

A. L. SHANGLE *v.* BOARD OF TRUSTEES, etc.

Now comes the defendants, and in compliance with the order of court amends the return and answers hereto filed as follows:

1st. They aver that the return herein first filed contains a copy of the full and complete record of all the proceedings of the board of trustees relating to the tax in controversy, and such copy is by leave of court hereto attached and made a part hereof.

2nd. They aver that the petition was signed by a majority of the resident freehold tax payers of Prairie township, and that a copy of such names set out in said copy of the record referred to in the first paragraph of this amendment.

133 3rd. They aver that the number of the resident freehold tax payers of Prairie township at the time of presentation of said petition was two hundred and eighty-three (283).

4th. They aver that eighteen parties referred to in the return heretofore filed, being the same names set out in plaintiff's petition as the names of the persons who were not resident freehold tax payers at the time of signing and presentation of the petition to the township trustees, were in fact resident freehold tax payers of said Prairie township.

(Signed) LAFFERTY & JOHNSON &
M. E. CUTTS,
Attorneys for Defendants.

STATE OF IOWA, *Mahaska County:*

I, S. C. Cook, having been duly sworn, say: That I am the
134 president of the New Sharon Coal Valley & Eastern Rail-
road Company, one of the defendants in this cause, and the action manager of said company, and that the allegations, averments, and statements set out and contained in the foregoing amendment are true, as I verily believe.

(Signed) S. C. COOK.

Subscribed and sworn to before me and in my presence by S. C. Cook, this 9th day of ——, 1881.

(Signed) J. KELLY JOHNSON,
Notary Public.

[Endorsed:] A. L. Shangle *vs.* Trustees Prairie T'p *et al.* Amended return, etc. Filed Nov. 10, 1881. D. R. Moore, clerk.

135 *Motion.*

In the Circuit Court of Iowa, in and for Mahaska County. October Term, 1881.

A. L. SHANGLE *v.* BOARD OF TRUSTEES *et al.*

Now comes plaintiff and moves to require the said trustees to make their return more specific in this—

1st. To set out the record of their proceedings and of all proceedings in relation to the tax in controversy.

2d. To state the fact as to whether or not in fact the petition was signed by a majority of the resident freehold tax payers.

3d. To state the number of resident freehold tax payers of said township at time of presentation of said petition.

4th. To give the names of all the resident freehold tax payers that resided in said township at the said time.

136 5th. That they state whether the eighteen parties referred to in their return were in fact resident freehold tax payers.

6th. That they be required to state whether in fact, to the best of their knowledge or belief, the petition was signed by a majority of the resident freehold tax payers of said township.

(Signed) JOHN F. LACY,
Att'y for Pl'ff.

[Endorsed:] Filed Nov. 7, 1881. D. R. Moore, clerk.

137 *Return of Writ of Certiorari.*

In the Circuit Court of Iowa, in and for Mahaska County.

A. L. SHANGLE *v.* TRUSTEES PRAIRIE T'P *et al.*

Now comes defendants in above-entitled cause, and for a return to the writ of *certiorari* in said cause state:

That at the time of the petition for tax was presented to said trustees they examined the assessors' books and also used their own per-

sonal knowledge in determining who were resident freehold tax payers of said Prairie township, and, after canvassing the matter among themselves, concluded that the persons whose names were on said petition constituted a majority of the resident freehold tax payers of said township.

138 That at said time said trustees, after using all the means of knowledge at their command, concluded and determined that said eighteen names referred to and set out in plaintiff's petition herein were all resident freehold tax payers of said township, but defendants are unable to state of their own knowledge at this time all the facts and circumstances connected with each of said persons.

That the persons named in plaintiff's petition as having had their taxes abated only had such taxes abated from year to year, and at the said time were resident free hold tax payers of said township, and were so determined and adjudged to be by said trustees at said time after the best investigation they were able to make in regard to the facts and law relating thereto.

That said Stinson's only title to land at said time was, as defendant are informed, a bond for deed.

(Signed) M. E. CUTTS &
LAFFERTY & JOHNSON.
Att'ys for Def'ts.

139 STATE OF IOWA, *Mahaska County:*

J. W. Allen, being sworn, says: That he is one of the defendants in the above-entitled cause, and is and at the time referred to in the petition in said cause was a member of the board of trustees of Prairie township, Mahaska county, Iowa; that the foregoing return has been read to him, and the statements therein contained are true as he verily believes.

(Signed) J. W. ALLEN.

Subscribed and sworn to before me by said J. W. Allen, this 4th day of November, 1881.

[SEAL.] (Signed) J. KELLY JOHNSON,
Notary Public.

[Endorsed:] A. L. Shangle *vs.* Trustees of Prairie Township *et al.* Return. Filed Nov. 7, 1881. D. R. Moore, clerk.

140 *Motion.*

In the Circuit Court, State of Iowa, Mahaska County. October Term, 1881.

A. L. SHANGLE *v.* BOARD OF TRUSTEES *et al.*

I.

Now comes plaintiff and moves to quash the return to the writ—
1st. Because it is not verified.
2nd. Because it is not complete, and does not answer the allegations of the petition, and is not signed by the defendants.

II.

1st. To require defendants to make due return in person, and not by attorney.

2nd. To make due return under oath to the various allegations of the petition.

3rd. That defendants may be required to set out the facts of the case in regard to M. D. Burket and others, 18 persons, alleged
141 in the petition to be not freeholders, and to verify the said facts by affidavit or official return.

4th. To answer and set up the facts in regard to Richard Toliver and others alleged to be not tax payers by reason of abatement of their taxes.

5th. Also, the facts in regard to John Stinson.

6th. That defendants may be required to set out the actual facts, under oath, as to the true number of resident freehold tax payers in said township at time of presenting said petition for election.

III.

1st. To quash the return, for the reason that the facts set out in the return show affirmatively that the defendants had no right to submit the question of taxation to the voters of said township.

2nd. The railroad tax law is unconstitutional and void.

3rd. The notice and petition for the election are void for uncertainty.

142 4th. No points on said railroad are designated.

5th. The line of said railroad is not in any manner designated by the notice or petition for the election.

6th. The Sharon, Coal Valley & Eastern railroad commences at New Sharon, and the notice and petition for election do not require said road to be finished or built only from the starting point to the starting point.

7th. The notice and petition for election do not comply substantially with the statute in this, that no railway is required to be built, and no particular line of railway is required thereby to be built.

8th. There is no such place as Coal Valley, and the term Eastern is too vague and indefinite to define the location of said railway.

9th. The board do not certify in the said record that there were only 283 resident freehold tax payers, but that the assessors' books
143 only showed 283 freehold tax payers.

10th. The notice and petition for election do not state the amount of work to be performed on said railway, nor the place where it shall be performed, as required by law.

11th. The record shows that the law has not been complied with, and that the proceedings in relation to said tax were void.

JOHN F. LACEY,
W. R. LACEY,
Pl't'ff's Att'ys.

[Endorsed:] Shangle *vs.* Board, etc. Motion to quash return, etc. Filed Oct. 29, 1881. D. R. Moore, clerk.

144 *Motion.*

STATE OF IOWA, } ss:
Mahaska County, }

Cir. C't, Feb. Term, 1881.

A. L. SHANGLE *vs.* TRUSTEES OF PRAIRIE T'P *et al.*

Now comes the plaintiff and moves to advance their cause upon the docket, for the reason that it involves great public interests and effects the title of all the land in Prairie t'p, in said county.

JOHN F. LACEY,
Att'y for Pl't'ff.

[Endorsed:] Shangle *vs.* Trustees of Prairie T'p. Motion. Filed Feb'y 22, 1881. D. R. Moore, cl'k. D. H. Le Seur, d'p. 35, 38.

145 *Answer and Return.*

In the Circuit Court of Iowa, in and for Mahaska County. February Term, 1881.

A. L. SHANGLE
vs.
THE BOARD OF TRUSTEES OF PRAIRIE TOWNSHIP, MAHASKA COUNTY, IOWA, *et al.*

Now comes defendants in above-entitled cause, and for answer and return to the writ of certiorari issued in said cause states—

1st. That there is hereto attached and made a part hereof, marked Exhibit "A," a full transcript of the records and proceedings of the above-named board of trustees, as prayed in said petition.

2nd. That all the persons named in plaintiff's petition as not being resident freehold tax payers of said Prairie township were, in fact, at the time said petition referred to and set out in said
146 transcript was presented to said trustees, all of them resident freehold tax payers of said Prairie township, and defendants aver that the persons whose names appear on said petition constituted a majority of the resident freehold tax payers of said township. That said writ of certiorari is hereto attached and made part hereof, and marked Exhibit "B."

Wherefore defendants ask that plaintiff's petition be dismissed, and that defendants have judgment for costs.

LAFFERTY & JOHNSON,
Att'ys for Def'ts.

EXHIBIT "B."

Petition for a Railroad Election.

APRIL 22, 1880.

To the trustees of Prairie township, Mahaska county, State of Iowa:

We, your humble petitioner and resident freehold tax payers
147 of the above-mentioned township, county, and State, most re-

spectfully ask that you submit the question of aiding in the construction of the New Sharon Coal Valley and Eastern railroad to the voters of this township. The rate per centum to be levied being three per cent. of the assessed valuation of the township, one-half to be collected the first year (1881) and one-half the following year (1882). The road to be fully completed to a depot within the town of New Sharon, in the above-mentioned township, county, and State, so that the cars shall be running thereon before the tax is due and collectable by the said railroad company. The road to be built within two years from the day of election, and if not built within said time the tax never to be collected.

148 APRIL 22, 1880.

NEW SHARON, MAHASKA COUNTY, IOWA,
December 17th, 1880.

We hereby certify that this a true copy of the petition for election in and of New Sharon Coal Valley and Eastern Railroad Company:

Names.	Names.
David Stanton.	Wm. Cramer.
J. N. Penland.	M. W. Nickolson.
H. J. Vail.	Jennett Collins.
A. Thornburgh.	O. P. Crawford.
T. Watland.	Nettie Burnham.
T. Mikelson.	M. A. King.
George Crile.	J. P. Kirk.
Wm. W. Winder.	David Galbreath.
L. J. Mosher.	F. A. Winder.
J. A. West.	David Fesler.
W. L. McAllister.	H. C. Gallaher.
Pierce Ratliff.	D. S. Ellis.
P. F. Benedict.	J. Pickrell.
Jesse Hiatt.	Pheba Allen.
W. B. Kirk.	C. S. Soney.
Snowden Myers.	Eli Devor.
Joseph Winder.	Curtis Lowrie.
H. B. Fortney.	A. H. Naylor.
149 S. J. Airy.	Ervin Allen.
H. P. Cobbs.	T. G. Carr.
Job Williams.	B. Gifford.
Joseph Mills.	Milton Morgan.
John Knudson.	J. M. Shaw.
R. M. Stanton.	J. C. Rosley.
Osmand Watland.	E. K. Shaw.
J. F. MacCurdy.	J. M. Dreman.
Evan Briggs.	A. J. Bartlett.
O. G. Knudson.	G. M. Beaver.
Geo. A. Roberts.	C. W. Tapliff.
J. Bowdle.	J. S. Beal.
R. F. Dean.	S. Janeway.

D. C. Morris.
H. D. Williams.
Nancy Rockwell.
Wiley Loyd.
J. Eaton.
Oliver Wildman.
J. S. Glotfelter.
Z. T. Kalbach.
O. A. Rosson.
O. G. Runsborough.
A. Parker.
Nichol McNamare.
A. Cadwallader.
J. S. Randell.
M. D. Burket.
150 Hannah Toliver.
M. J. Fortney.
F. O. Bateman.
Pheba Quaintance.
S. Ceitsman.
E. J. Kennard.
Jo. Kloose.
J. Nickolson.
J. F. King.
H. H. Fogan.
R. Small.
F. B. Ellison.
W. J. Sexton.
D. E. Warren.
Minnie Kirk.
Amelia Evans.
Rachel Hughes.
Mattie Hughes.
R. J. Hughes.
G. A. Hughes.
W. H. Evans.
C. H. Cramer.
E. A. Stanton.
Annie Goss.
J. Winder.
F. W. Stabler.
G. W. Way.
N. B. Adams.
151 M. T. Swickard.
Jacob Straum.
Allen X. Goddy.
Elizabeth J. Woods.
Mrs. Etta Moore.
R. T. Gobble.
Truman Camp.

E. J. Strain.
Joseph Jennings.
W. S. Bateman.
N. C. Thomson.
J. E. Vining.
G. B. Gatlin.
Richard Toliver.
Dan. Orville.
Hugh Dredgeon.
E. W. Wintermute.
P. Edwards.
N. S. Lyman.
E. O. Cruttenden.
Mary A. Hill.
Lovina Boggie.
T. S. Thompson.
J. McAuley.
A. J. Winder.
Annie Fagan.
Miranda Munsell.
Dorcas Bump.
E. M. Stanton.
Kate Johnson.
Mary J. Michener.
Maggie A. King.
Maria Phillips.
S. B. Lawrence.
Jacob Hall.
J. S. Dickerson.
J. N. Beal.
H. Kirk.
J. B. Smith.
C. J. Dodd.
David Vail.
Ruth Totten.
M. A. Frazier.
Mattie T. Briggs.
Mary A. Coffman.
J. Versteig.
Hettie M. Turner.
Sarah J. Moore.
Susan M. Phitts.
Rebecca Rhea.
John Stinson.
Goodman Watland.
David Dean.
W. A. Bryan.
John Hiatt.
Wm. Pearson, Jr.
Wm. Pearson, Sr.

NEW SHARON, IOWA, *December* 17, 1880.

We hereby certify the within is a true copy of petitioners' names, as presented to the township board of trustees, calling an election to vote a tax in aid of the New Sharon Coal Valley and Eastern Railroad Company.

O. G. KNUDSON,
W. J. BRYAN,
J. W. ALLEN,
Trustees of Prairie Township, Mahaska County.

I, H. M. Davis, township clerk of Prairie township, Mahaska county, hereby certify that the following is a correct copy of orders of township trustees of said township, calling a special elec-
152 tion to be held in New Sharon, in said township, on the eleventh day of May, A. D. 1880, for the purpose of voting on the proposition to aid in the construction of the New Sharon Coal Valley and Eastern railroad by a three per cent. tax on the taxable property of said township.

Notice of Election.

Whereas a petition has been presented to the trustees of Prairie township, Mahaska county, Iowa, by one hundred and sixty freehold tax payers of said township, being a majority of the freehold tax payers of said township, asking that the question of aiding by a three per cent. tax in the construction of the New Sharon Coal Valley and Eastern railroad to a depot in the town of New Sharon, in said township, county, and State, be submitted to the voters in said township: Now, therefore, notice is hereby given that on the 11th day of May, 1880, at the town of New Sharon, in said township, county, and State, a special election will be held for the
153 purpose of voting upon the question of aiding in the construction of the New Sharon Coal Valley and Eastern Railroad by a three per cent. tax of the taxable property of said township, one-half of which is to be collected the first year (1880) and one-half collected the second year (1881), said road to be fully completed and running to a depot within the town of Sharon, in said township, county, and State, so that the cars shall be running there on or before said tax is due and collectable by the said railroad company, said railroad to be built within two years from the day of election; if not built within that time said tax never to be collectable. Those who favor said tax will have written or printed on their ballots "for taxation;" those opposed to said tax "against taxation."

Given under our hands, this 27th day of April, 1880.

O. G. KNUDSON,
W. A. BRYAN,
J. W. ALLEN,
154 *Trustees of Prairie Township, Mahaska Co., Iowa.*

Attest:
H. M. DAVIS, *Township Clerk.*

April 27th, 1880, the trustees met in the office of G. C. Morgan, of Sharon, at one o'clock p. m. All were present. A petition from one hundred and sixty (160) freehold tax payers of this township asking that an election be called for the purpose of aiding in the construction of the New Sharon Coal Valley and Eastern railroad by voting a tax upon the taxable property of the township of three (3) per cent., the assessor's books were canvassed, and there were found to be two hundred and eighty-three (283) freehold tax payers in the township, and one hundred and sixty (160) being a majority of the same, the trustees ordered and election to be held at New Sharon May 11th, 1880, and the notices required by law were
155 written and signed by the trustees, and directed to be posted immediately by the township clerk.

Board then adjourned.

H. M. DAVIS, *T'p Clerk.*

MAY 11TH, 1880.

Election held as per notice. Whole number of votes cast 377. Those voting for the tax, 190; those voting against the tax, 187. The results were duly certified to by the county auditor.

NEW SHARON, IOWA, *Dec.* 17, 1880.

We hereby certify that the within is a true record of the meeting of the board of trustees calling an election, and the result of said election in aid of construction of the New Sharon, Coal Valley and Eastern Railroad Company.

O. G. KNUDSON,
W. A. BRYAN,
J. W. ALLEN,
Trustees of Prairie Township, Mahaska County, Iowa.

[Endorsed:] A. L. Shangle *vs.* Board of Trustees of Prairie Township *et al.* Answer & return. Lafferty & Johnson, for def'ts.

156 EXHIBIT "B."

The State of Iowa to the board of trustees of Prairie township, Mahaska county, Iowa, said board consisting of J. W. Allen, O. G. Knudson, and W. A. Bryant, trustees, or their successors in office; John H. Warren, treasurer of said county; S. B. Waters, auditor of said county, an- the New Sharon Coal Valley and Eastern Railroad Company, Greeting:

Whereas on the petition A. L. Shangle it has been made to appear to the circuit court that you have exceeded your jurisdiction as the board of trustees of Prairie township, Mahaska county, Iowa, and are proceeding illegally in the matter of the levy of a certain railroad tax therein proceeding, and have proceeded illegally in the matter of the submission to the voters of Prairie township of the levy of a tax of three per cent. in aid of the New Sharon Coal Valley and Eastern Railroad Company, in the said township
157 of Prairie, in Mahaska county, Iowa.

And in consideration of the premises the plaintiff asks that of writ of certiorari may issue, directing the said trustees of Prairie township, commanding them to certify fully, on or before the first day of next term — the said court, to be held on the third Monday in February, 1881, at Oskaloosa, Iowa, a full transcript of the records and proceedings aforesaid, as well as the facts in the case, describing them, or any of them, with convenient certainty, said transcript to show all the acts done by you in relation to the submission of the said tax to vote in Prairie township, Mahaska county, Iowa, said election to be held on or about May 11th, 1880, and said township to show all the proceedings and papers submitted to you upon which you acted in the said cause, and to certify as well all the facts in the case. And have you then and there this writ of certiorari, with your doing thereon.

158 Witness my name and the seal of said circuit court hereto affixed, at Oskaloosa, Iowa, January 3rd, A. D. 1881.

[SEAL.] D. R. MOORE, *C. C.*
D. H. LE SEUR, *Deputy.*

[Endorsed:] A. L. Shangle *v.* Board of Trustees, etc. Amendment and return to writ of certiorari. John F. Lacey, att'y for pl't'ff.

159 The State of Iowa to the board of trustees of Prairie township, Mahaska county, Iowa, said board consisting of J. W. Allen, O. G. Knudson, and W. A. Bryant, or their successors in office; John H. Warren, treasurer of said county; S. B. Walters, auditor of said county, and the New Sharon Coal Valley and Eastern Railroad Company, Greeting:

Whereas on the petition of A. L. Shangle it has been made to appear to the circuit court that you have exceeded your jurisdiction as the board of trustees of Prairie township, Mahaska county, Iowa, and are proceeding in the matter of the levy of a certain railroad tax therein, and proceeding and have proceeded illegally in the matter of the submission to the voters of said Prairie township of the levy of a tax of three per cent. in aid of the New Sharon, Coal Valley and Eastern Railroad Company, in the said township of Prairie,

160 in Mahaska county, Iowa; and, in consideration of the premises, the plaintiff asks that a writ of certiorari may issue, directing the said trustees of Prairie township, commanding them to certify fully, on or before the first day of the next term of said court, to be held on the third Monday of February, 1881, at Oskaloosa, Iowa, a full transcript of the records and proceedings aforesaid, as well as the facts in the case, describing them or any of them with convenient certainty, said transcript to show all the acts done by you in relation to the submission of the said tax to vote in Prairie township, Mahaska county, Iowa, said election to be held on or about May 11th, 1880, and said transcript to show all the proceedings and papers submitted to you upon which you acted in the said cause, and to certify as well all facts in the case. And have you

161 then and there this writ of certiorari, with your doings thereon.

Witness my name and the seal of said circuit court hereto affixed, at Oskaloosa, Iowa, January 3rd, 1880.

D. R. MOORE,
Clerk C. C.
D. H. LE SEUR, *Deputy.*

The original citation, of which this is a copy, came into my hands on the day of its issue, and I served as follows, to wit:

On W. A. Bryan, president of said board of trustees, by reading and delivering to him the original citation, and J. W. Allen, a member of said board, by reading and delivering to him a copy; and on Plummy Edwards, successor to O. G. Knudson, by copy with Mrs. Plummy Edwards, his wife, at his house and usual place of residence, she being a member of his family over the age of fourteen years, he not being found, all in Prairie T'p, Mahaska county,
162 Iowa, Jan. 19th, 1881; and on the 31st day of Jan., 1881, in said T'p & Co. & State, I served it on New Sharon Coal Valley and Eastern Railroad Company, by delivering a copy of citation to David Morgan, president of said Co., he wa-ved reading, and on the 1st day Jan., 1881, I served it on John H. Warren, treasurer, and S. B. Walters, auditor, by copy to each of them, they waived reading, in Oskaloosa T'p, Mahaska Co., Iowa.

MARQUIS BARR,
Sheriff of Mahaska Co., Iowa.

Service	$1 75
Copies	2 40
Mileage	2 40
	$6 55

163 *Petition for Writ of Certiorari.*

In the Circuit Court, State of Iowa, Mahaska Co. Feb'y Term, A. D. 1880.

A. L. SHANGLE
v.
THE BOARD OF TRUSTEES PRAIRIE T'P, MAHASKA CO., IOWA, said Board consisting of J. W. Allen, O. G. Knudson, and W. A. Bryant, trustees or their successors in office, John H. Warren, Treas. said Co.; S. B. Waters, Auditor said Co., & New Sharon Coal Valley & Eastern R. R. Co.

To the honorable circuit court in and for the said county:

I.

The pl'ff respectfully represents that he is a resident and a freehold tax payer in Mahaska Co., Iowa, and a resident and freehold tax payer of Prairie T'p, said Co. That he, at the request of
164 and for the benefit of residents and tax payers of said T'p, brings this action, praying herein for a writ of certiorari to correct the wrongs herein complained of. That in 1880 the def'ts

J. W. Allen, O. G. Knudson, and W. A. Bryan were acting as trustees of Prairie T'p aforesaid. That certain persons representing themselves to be resident freehold tax payers of said T'p presents untosaid board of trustees a petition asking said trustees to order an election in the said T'p, at which the question of voting a tax in aid of the New Sharon Coal Valley & Eastern R. R. Co. should be submitted to the electors of the said Prairie T'p, said election to be held on the 11th day of May, 1880. That the said petition purported to contain a majority of the signatures of the residents freehold tax payers of said T'p. That the said petition contained 164 names of persons purporting to be proper signatures under the law, and purporting to be resident freehold
165 tax payers. That the said petition contained the names of sundry persons who were not resident freehold tax payers, viz: M. D. Burket, Milton Morgan, A. J. Bartlett, L. Heitzman, T. W. Stattler, E. M. Stanton, Allen Godby, Wm. Pearson, Sr., A. Thornburgh, W. L. McAllister, W. B. Kirk, S. Irish, Eli Devore, Snowdore Myers, Nettie Burnham, M. A. King, D. S. Ellis, & Joseph Mills, being 18 persons in number, who were not at the time of signing and presenting the said petition resident freehold tax payers in said T'p. That the said edition also contained the names of freeholders whose taxes have been by competent authority fully cancelled and abated, and said persons fully relieved by the board of t'w'p equalization and by the board of supervisors of said Co. from the payment of taxes and their names struck from the assessment roll and their taxes abated, viz: Richard Toliver, Lavina Boggin, Hannah Toliver, Sarah J. Moore, Rebecca Rea, Kate Johnson, Pheba Allen,
166 in all 9 in number, and also the name of John Stinson appeared upon the said petition, whose only title to real estate was a bond for a deed dependent upon certain terms and conditions, and therefore not a freeholder.

That said 28 names were all counted by the said board of trustees as resident freehold tax payers, and by said board determined to be competent legal signers to the said petition. That there were, in truth and in fact, at the time said petition was presented, not less than 358 resident freehold tax payers, and if the said 19 names of non-freeholders should be properly added thereto, then there were 377 resident freehold tax payers at the said time in the said t'w'p, and the said petition was not signed by a majority thereof.

That in pursuance of and in obedience to the request of said petitioners the said board of trustees took cognizance of the
167 said matter and falsely and wrongfully determined that the said 164 signers were competent and qualified to sign the petition, and wrongfully decided that the said petition was signed by a majority of the resident freehold tax payers, when, in truth and in fact, said petition was not signed by the number of petitioners required by law, and was not signed by a majority of the freehold resident tax payers at the said time in said t'w'p. That the said board was at the said time exercising judicial functions in determining the question aforesaid, and the said board has exceeded its jurisdiction, and has acted illegally, as aforesaid, and there is no

other plain, speedy, and adequate remedy. That the said board thereupon ordered an election, which resulted in the voting of said tax of three per cent., payable one-half in 1881 and one-half in 1882, and the said board of trustees thereupon certified the
168 said tax to the Co. auditor and board of supervisiors to make the levy. That the pl't'ff and other interested persons thereupon filed a written protest with the said board of supervisors, protesting the said levy of the said tax, but that, notwithstanding the said protest, the said board of supervisors did levy the said tax in words and figures following:

"In accordance with the reference made to this board of a special election held in Prairie t'w'p May 11th, 1880, to aid in the construction of the New Sharon Coal Valley and Eastern R. R. Co., a three per cent. tax is hereby levied on the taxable property of said t'w'p, one-half of which is to be due and collectable until said railroad shall be fully completed and opened to a depot within the town of New Sharon: And provided further, That no part of said tax shall become due and payable if said railroad company fail to fully complete said railroad to and in said town of New
169 Sharon on or before May 11th, 1882.

That the said taxes will be levied and collected unless the said proceedings are set aside and cancelled by this court under this proceeding.

II.

That the said board of supervisors, the said treasurer and auditor, and the said New Sharon & Coal Valley & Eastern R. R. Co. are hereby made parties to this proceeding, to the end that they may be fully bound by these proceedings.

III.

In consideration of the bremises the pl't'ff asks that a writ of certiorari may be issued and directed — Trustees of the said T'w'p of Prairie commanding the said trustees to certify fully on or before the 1st day of the next term of the said court to be held on the third Monday in Feb'y, 1881, at Oskaloosa, Iowa, a full trans-
170 script of the records and proceedings as well as the facts in the case described or referring to them or any of them with convenient certainty and to have there and then the writ of certiorari and the pl't'ff prays that the said proceedings may be annulled and set aside and declaimed wholly void, and that the said tax may be null and void and the said election set aside and all claims based thereon declared null and void, and the pl't'ff prays for such other and further relief in the premises as may be just and legal, and pl't'ff asks judgment for costs.

JOHN F. LACY,
Att'y for Pl't'ff.

I, A. L. Shangle, do swear that I am a party interested in *this* proceedings and one of the numerous persons in whose behalf the same is brought, and that I am a resident freehold tax payer of

Prairie t'w'p, Mahaska Co., Iowa, and that I have personal
171 knowledge of the matters set out in foregoing petition and that the allegations therein contained are true as I believe.

A. L. SHANGLE.

Sworn to before me, and subscribed in my presence by A. L. Shangle, this 30 day of Dec., 1881.

[SEAL.] W. R. LACY.

[Endorsed:] Circuit court. A. L. Shangle *v.* Board of Trustees Prairie T'w'p *et al.* Petition. Filed Dec. 30, 1880. D. R. Moore, cl'k. 3,538, 132, 357. $1.50 paid by Lacy.

172 EXHIBIT "B."

Whereas the New Sharon Coal Valley and Eastern Railroad Company, for the purpose of securing the construction of its roadway, did, on the 8th day of June, 1881, make a contract with H. F. Stone, whereby said railroad company contracted with said Stone for the building of its roadway, and agreed, among other things, to pay said Stone in cash [for] work or material an amount equal to a two per cent. tax on the assessed valuation of the several townships through which said road is built; and

Whereas said Stone has complied with his part of said contract, and said railroad company, now the Chicago, Burlington and Pacific Company, successor to the former railroad company, have [not] paid any portion of said sum so agreed to be paid; and

Whereas said H. F. Stone has requested the taxes voted in
173 aid of the construction of the New Sharon Coal Valley and Eastern railroad and Chicago, Burlington and Pacific Railway Company in the several townships along the line be assigned to Alfred Sully, of New York city, for money advanced by Mr. Sully to enable said Stone to fulfil his contract; and

Whereas said H. F. Stone has agreed, if such assignment is made, to accept the same in full payment of the two per cent. sum that was agreed to be paid him by the railroad company:

Now, therefore, in consideration of the foregoing, the Chicago, Burlington and Pacific Railway Company hereby sell, assign, and transfer all its right, title, and interest in and to the several taxes voted in aid of the construction of the New Sharon Coal Valley and Eastern railroad and the Chicago, Burlington and Pacific railway in the townships of Newton and Lynn Grove, in Jasper county,
174 Iowa; in the townships of Prairie, Oskaloosa, and Cedar, in Mahaska county; in the townships of Steady Run and Richland, in Keokuk county; in the townships of Brighton and Brighton City, in the county of Washington; in the township of Jefferson, in Henry county, and the township of Morning Sun, in Louisa county, State of Iowa, to Alfred Sully, of the city of New York, in full payment of the sum agreed to be paid H. F. Stone in the contract with him of June 8th, A. D. 1881; and we hereby authorize said Sully to collect and receipt for said taxes as fully as could be done by the railway company.

In witness whereof, we have hereunto set our hands and affixed the official seal of said railway company, this 1st day of February, A. D. 1883.

[SEAL.] CHICAGO, BURLINGTON & PACIFIC RAILWAY CO.,
By S. C. COOK, *President.*

Attest:
E. C. OGG, *Secretary.*

Filed Oct. 29, 1883.

D. R. MOORE, *Clerk.*

175 *Answer of John H. Warren, County Treasurer.*

In the Circuit Court of the State of Iowa, Mahaska County. October Term, 1883.

JAMES M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

Now comes the defendant, John H. Warren, and answering for himself alone, says:

He admits that he is the treasurer of Mahaska county, State of Iowa; admits that the def't, The Chicago, Burlington and Pacific Railroad Company, is a railroad corporation organized and doing business under the laws of the State of Iowa.

Admits that defendant, Alfred Sully, is the owner of the tax of Prairie township, which is sought to be enjoined in this action.

And admits that this defendant has no interest in the
176 subject-matter of this suit, except as may be denied by virtue of his official position as treasurer.

And further answering, this defendant says as to all the other matters alleged in the petition herein and amendment thereto, this defendant has no sufficient information or knowledge to form a belief, and therefore denies each and all of said allegations therein stated.

Wherefore defendants asks that this cause be dismissed, and he have judgment against plaintiff for the costs of this action.

LAFFERTY & NEEDHAM &
R. A. SANKEY,
For Def'ts.

STATE OF IOWA, *Mahaska County:*

I, John H. Warren, being sworn, say: That I have read the foregoing answer and know the contents thereof, and that the several allegations therein contained are true, as I verily believe.

JOHN H. WARREN,
Co. Tr's.

177 Subscribed and sworn to before — and in my presence by John H. Warren, this 26th day of October, A. D. 1883.

[SEAL.] W. H. NEEDHAM,
Notary Public.

[Endorsed:] James M. Drennen *et al. vs.* Thomas Graham *et al.* An-

swer of defendant John H. Warren. Filed Oct. 29, 1883. D. R. Moore, clerk.

178 *Reply to Defendants' Answer.*

In the Circuit Court of the State of Iowa, in and for Mahaska County.

JAMES M. DRENNEN *et al. v.* THOMAS GRAHAM *et al.*

Now come the plaintiffs, and for reply to the answer of the defendant, The Chicago, Burlington & Pacific Railroad Company and Alfred Sully, filed herein, state:

I. Replying to the first paragraph of said answer, plaintiffs deny that at the expiration of the two years from the date of said election the defendant railroad company had fully complied with the terms of the said notice of election by building a road in a northwesterly direction from New Sharon to Newton, Iowa; deny that any
179 road was built from New Sharon to Newton, within the said two years or that twelve miles of said road was built at said time, and deny that such, if built, would be a full compliance with the terms of said motion of election. Plaintiffs deny that said road or any road whatever was built by the said railroad company or its assigns, or any other person or company, from Oskaloosa, Iowa, to New Sharon, Iowa, within the said two years, and deny that the said road was built, completed, or in operation from Keithsburg, Ill., to Oskaloosa, Iowa, or to New Sharon, Iowa, within the said two years, and deny that said road was fully completed from New Sharon through Lynn Grove township to Newton, Iowa, within the said two years, or that twelve miles of said road was built, completed, and in successful operation at said time.

II. Replying to the second paragraph of said defendants'
180 answer, plaintiffs deny that all the matters pertaining to the regularity, sufficiency, and certainty of the notice of said special election were determined and adjudicated by the trustees of said Prairie township, and deny that the said trustees had authority to adjudicate and determine the said questions arising out of, connected with, and concerning the said notice of election, and deny that such pretended adjudication, if had, would be binding on these plaintiffs; and plaintiffs, further replying to said paragraph two of said answer, deny that all questions and matters happening prior to said election in any way affecting the regularity and validity of the same, and of the result of said election and allegations and questions of fraud stated and set forth in the petition and amendments thereto in this cause, have been fully determined and finally adjudicated by this court, and deny that the same are now *res adjudicata.*

But plaintiffs aver that they were not parties to the said
181 action of A. L. Shangle *v.* The Trustees of Prairie Township *et al.*, described and set forth in defendants' said answer, and that none or either of them were parties to said suit nor privies thereto, and they are not bound by any adjudication had therein if such adjudication was had; plaintiffs farther aver that no adjudication by the court was had in said cause of A. L. Shangle *vs.* The

Trustees of Prairie Township *et al.;* that said cause was never tried by the court nor submitted to the court for adjudication or determination, and that no trial was ever had therein, either upon the merits or upon questions of law, but that any judgment or decree had in said action was a compromise judgment or decree, and binds or estops no one, and such judgment or decree was obtained by collusion between the plaintiff, A. L. Shangle, and the defendant railroad company in said action; that the said defendant railroad
182 company paid to the plaintiff in said cause a valuable consideration, to wit, a large sum of money for permitting and consenting to such judgment or decree as was entered in said cause. That but one question was involved in said action, to wit, the sufficiency of the petition for said special election, and that the said action did not involve all the questions involved in this action.

Wherefore plaintiffs deny that they are barred and estopped from maintaining this action because of said pretended former adjudication. Plaintiffs further aver that they have not compared the several exhibits attached to defendants' answer with the originals, and cannot state whether the same are true copies or not.

III. Plaintiffs, replying to the third paragraph of said defendants' answer, deny that a road to be built from New Sharon, in a
183 northwesterly direction to Lynn Grove township, in Jasper county, Iowa, was the road contemplated and spoken of by David Morgan, prior to the said election in Prairie township, but aver that the road spoken of by the said David Morgan prior to said election, and promised by him and the said railroad company to these plaintiffs and the said citizens of Prairie township, and to aid in the construction of which said tax was voted, was a road to [be] built from New Sharon to the east, or from the east to New Sharon, and that no other road was talked of or promised by the said David Morgan or the said railroad company prior to said election than a road to run east from New Sharon; and that the said tax was voted by the said Prairie township on the faith of the representations of the said David Morgan, president of said company, and the
184 said railroad company, that the said railroad would be built from New Sharon to the east, and that a line to run east from New Sharon was the line for which the said aid was asked and for none other; and the plaintiffs further aver that the falsity of said representations did not become known to them until about the expiration of the two years from the date of said election.

IV. And plaintiffs, replying to the fourth paragraph of defendants' answer, deny that the said railroad company have in good faith complied with the terms and conditions of the said notice of election; deny that within two years from the date of said election said railroad company did build and complete or build a railroad to a depot in said town of Sharon, and running from a depot
185 in said town of Sharon in a northwesterly direction to Newton, in Jasper county, Iowa; deny that the said railroad company, within the said two years, built and completed any road to a depot in the said town of Sharon to or from any direction whatever.

V. Replying to the fifth paragraph of said defendants' answer, plaintiffs aver that as to whether or not defendant, Alfred Sully, is the owner [of] said tax, by assignment or otherwise, they have not sufficient knowledge or information to form a belief; they, therefore, deny that he is such owner. Plaintiffs further aver that if said tax is assigned to the said Alfred Sully such assignment is without authority of law, illegal, null, and void, and passes no title or rights to the said Alfred Sully a- against these plaintiffs. They further state that they have not compared the copy of said pre-
186 tended assignment attached to defendants' answer, marked Exhibit B, with the original, and cannot state whether or not the same is a true copy of said original. Plaintiffs, further replying to said paragraph fifth of said defendants' answer, aver that as to whether the defendant, Alfred Sully, examined the record proceedings of said special election, as stated in said answer, or not, plaintiffs have not sufficient knowledge or information to form a belief; they, therefore, deny that he made such examination, but they further aver, that whether he made such examination or not is immaterial; that he stands in no better condition than his assignor, and that he is charg-able with and bound by all frauds and irregularities that his said assignor, the said railroad company, is charg--able with or bound by; and plaintiffs further aver that the said matters and things set forth in said paragraph, if true, do
187 not constitute an estoppal at law or in equity as against the plaintiff.

VI. For reply to 6th paragraph to said defendants' answer, and to cross-demand set forth therein, plaintiffs deny each and every allegation therein contained; deny that the said trustees of Prairie township have entered into a combination with plaintiffs to defeat the collection of said tax and the payment thereof, and deny that the said trustees have at any time or in any manner colluded with plaintiffs for the purpose set forth in defendants' answer, or for any other purposes; and plaintiffs, further replying to said paragraph 5, and by way of plea in abatement of said cross-demand, aver that there is now pending in this court an action, wherein the said Alfred Sully, defendant herein, is plaintiff, and the said trustees of
188 Prairie township are defendants, wherein the same relief is demanded as is demanded in said cross-demand in said paragraph 5th, and that all the questions involved in said cross-demand are involved in said action; wherefore plaintiffs aver that said cross-demand should abate and be held as naught.

VII. For farther and general reply to said defendants' answer herein, plaintiffs deny each and every affirmative allegation contained in the said answer inconsistent with the averments of the plaintiffs' petition herein and the amendments thereto, and not herein specifically admitted.

Wherefor plaintiffs pray as in their said petition and amendment thereto.

(Signed) L. C. BLANCHARD AND
GEO. C. MORGAN,
Attorneys for Plaintiffs.

189 STATE OF IOWA, *Mahaska County:*

I, Geo. C. Morgan, on my oath, say: That [I] am one of the attorneys for plaintiffs in the above-entitled cause, and am one of the plaintiffs in said action; that I have read the foregoing reply, and have personal knowledge of the matters and things therein alleged and contained, and that the same are true, as I verily believe.

(Signed) GEO. C. MORGAN.

Subscribed and sworn to before me by the said Geo. C. Morgan, at Oskaloosa, Iowa, this 31st day of October, 1883.

[SEAL.] (Signed) J. B. BOLTON,
Notary Public.

[Endorsed:] Jas. M. Drennen *et al. vs.* Thos. Graham *et al.* Filed. D. R. Moore, clerk. L. C. Blanchard & Geo. C. Morgan, att'ys for pl't'ffs.

190 *Motion to Dissolve the Injunction.*

STATE OF IOWA, *Mahaska County:*

Circuit Court. October Term, 1883.

JAMES M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

Now come the defendants in this cause, except the township trustees, and move the court to dissolve the injunction granted herein upon the bill and answer, and for cause of such motion state;

1st. There is no equity in the bill.

2nd. There has been a former adjudication of the matters set out as ground for equitable relief in the petition, and said matters are now *res adjudicata.*

3rd. The allegations of the petition are denied by the answer and affidavits attached.

4th. The allegations of fraud in the petition are denied by — in the answer and affidavits attached.

191 5th. The statements of the petition does not warrant the continuance of the injunction.

(Signed) LAFFERTY & NEEDHAM, &
R. A. SANKEY,
For Def'ts.

[Endorsed:] James M. Drennen *et al. vs.* Thomas Graham *et al.* Motion to dissolve injunction. Filed Nov. 7, 1883. D. R. Moore, clerk.

192 *Amendment to the Answer.*

Circuit Court, Mahaska County, State of Iowa. October Term, 1883.

JAMES M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

Now come the defendants, John H. Warren, treasurer; The Chi-

cago, Burlington and Pacific Railroad Company, and Alfred Sully, and for an amendment to the answer herein say:

That in addition to the allegations in the original answer of defendants, they further say that each and all of the allegations of fraud and of fraudulent representations claimed to have been made by the agents and officers of the railroad company to induce the voters of Prairie township to vote the tax complained of set out in the original petition and amendment thereto in this cause were, at the time the defendant railroad company com-
193 menced building its road from the town of Sharon, northwesterly, to Newton, Jasper county, Iowa, as fully known as at the commencement of this suit; but that said plaintiff stood by and permitted said railroad company to expend large sums of money, to wit, over three hundred thousand dollars, in building the line of road from New Sharon to Newton, Iowa, to earn said tax of Prairie township, and neglected and refused to make known any of said fraudulent representations or acts complained of herein until after said railroad was built and completed, and they were sure of receiving the full benefit of said railroad; that each and all of the plaintiffs had actual knowledge of the commencement of work by the railroad company in the town of New Sharon and of the building of the same northwesterly through said Prairie township, and of the expenditure of large sums of money by the company in building said road, and that all of said work was being done
194 and money expended on the faith of the taxes voted by Prairie township, and for the purpose of earning said tax, at the time said work was commenced and money expended, but that said plaintiffs and each and all of them, for the purpose of receiving the benefits accruing to them as residents and property holders of said township by the building of said railroad, purposely refrained from making known any of the allegations of fraud in procuring said tax to be voted now set up and relied upon to defeat the tax, said plaintiffs refusing to speak because they desired the railroad to be built and it to comply with its part of the written contract on which said tax was voted, and then to take advantage of said allegations of fraud to evade compliance on their part.

II. Defendants for a further answer say that the organization known as the New Sharon Coal Valley and Eastern Railroad Company, to which said tax of Prairie township was voted,
195 was organized at the town of New Sharon; that one or more of the plaintiffs were officers of said company, and the remainder of the officers citizens of said township or vicinity; and that such was the case at the time of the election and voting the tax in Prairie township; that it was well known an- understood by all of the voters of Prairie township previous to the election and at the time thereof that said railroad company nor any of its members had sufficient financial ability to build a railroad or to assist materially in building one; that if any railroad was built, as contemplated, it would have to be done by money obtained outside, and from parties not then connected with said enterprise, and that said tax, if voted, was for the purpose of inducing capital to take hold of

and aid in the enterprise. All of these facts were well known, talked of, and discussed by the voters of Prairie township at the time of procuring signers to the petition asking trustees to call an
196 election, and at the time of the election, and each of these plaintiffs had full and actual knowledge of each of said matters before casting their vote at said election.

That at the commencement of building said railroad northwesterly from the town of New Sharon each of these plaintiffs knew that the money to build the same was being obtained from Eastern persons (who had had no connection with the railroad company at the time the tax was voted, and who had no knowledge of any of the matters transpiring at said election), on the strength and promise of said tax being paid, and that said money would not have been furnished had not said tax of Prairie township been held out as an inducement for the parties to build the road, and that the money was being furnished on the faith and promise of said tax. That a portion at least, if not all, of these plaintiffs actively encouraged by word and deed the commencement of the building of said road, and all of them had actual knowledge of such commencement,
197 and that strangers to the railroad organization were furnishing the money, and had no knowledge of the allegations of fraud now set up as a defence to the payment of the tax, and that all of the plaintiffs purposely and with intent to first get the benefit of the railroad before making defense to the payment of the tax, refrained from giving any information, to any of said parties about any false or fraudulent allegations having been made to induce the voting of said tax or to take steps to set said tax aside because of such fraudulent representations, and did not take any action thereon, or make said allegations known until after said railroad had been completed to the town of Newton, in Jasper county, Iowa, a distance of about thirty miles.

Wherefore defendants say that plaintiffs are barred and stopped from setting up any defense of fraud against the collection and payment of said tax, that the preliminary injunction herein issued should be dissolved, this action of plaintiffs dismissed, and
198 defendants have judgment against pl't'ffs for costs.

(Signed) LAFFERTY & NEEDHAM &
R. A. SANKEY,
For Def'ts.

The affidavit of David Morgan is hereto attached and made a part of this amendment to answer, and is marked Exhibit "B."

STATE OF IOWA, *Jasper County:*

S. D. Cook, being sworn, say: That I have heard the foregoing amendment to the answer herein read, and know the contents thereof; that I was instrumental in getting the defendant Sully and others to furnish the money to build the railroad, and I personally know that none of said parties had ever head of said allegations of fraud in the procurement of the voting of the tax in Prairie township prior to the commencement of this suit. That I have been presi-

dent of the defendant railroad company since July 18th, 1881, and took an active interest in getting the railroad built, was in New Sharon and Prairie township during almost all the time said road was being built through said township, and was in frequent
199 consultation and communication with citizens of said township, and that I never heard of or knew of any charges or allegations of fraud in procuring said Prairie township tax to be voted until I read the same in the petition in this cause, and that the statements and allegations in this amendment are each true as I verily believe.

(Signed) S. C. COOK.

Subscribed and sworn to before me, and in my presence by S. C. Cook this 29th day of October, A. D. 1883.

[SEAL.] E. C. OGG,
Notary Public.

[Endorsed:] Jas. M. Drennen *et al. vs.* Thomas Graham *et al.* Amendment to answer.

200 EXHIBIT "B."

STATE OF IOWA, *Mahaska County:*

I, David Morgan, after being duly affirmed, say: That I have heard read the petition in this cause and the amendment thereto, and the answer of the defendants, The Chicago, Burlington & Pacific Railroad Company and Alfred Sully; that I have had personal knowledge of the most of the matters of said railroad company from its organization until some time after the tax complained of in this action was voted in Prairie township, Mahaska county, Iowa, and that I had personal knowledge of some of the steps taken in regard to the voting of said tax, being at said time the president of the railroad company.

That all allegations of fraud in said petition and amendment on the part of myself are untrue and unfounded; that I never made any false or fraudulent statement, knowing them to be such,
201 to induce persons to vote for the said tax; neither did I at any time to my knowledge authorize any one to make false statements to so influence their vote. I did, in conversation and perhaps otherwise, express my opinion on railroad matters that were never realized, having been perhaps too sanguine of results; that the conditions of the petition and notice of election were strictly adhered to in discussing the election, and that on the fulfilment thereof the tax would be due and collectable. This I stated in a public meeting the night previous to the election, I think it was, that the petition was so drawn that the tax would fall due when the road should have been built either east or west from New Sharon. This was well known to the board, and the public statement made by self that we did not know which way we would build first. I never promised to abate or have abated any one's tax to get
202 them to vote for the tax to the best of my recollection, or even intended so much. I may have promised, and I think

I did, to take the amount of individual tax in work. The allegation in this answer and amendment, that the railroad company have earned the tax according to the terms of petition and notice of election, is correct, as I verily believe.

(Signed) DAVID MORGAN.

Subscribed and affirmed before me and in my presence, this 6th day of November, A. D. 1883, by the above-named David Morgan.

[SEAL.] (Signed) GEO. N. LAFFERTY,
Notary Public.

[Endorsed:] James M. Drennen *v.* Thomas Graham. Filed Nov. 7, 1883. D. R. Moore, clerk.

203 *Motion to Strike.*

In Circuit Court of Mahaska County, Iowa.

JAMES M. DRENNAN *et al. vs.* THOMAS GRAHAM *et al.*

Now come plaintiffs and moves to strike from the files the affidavit of David Morgan, attached to the amendment to answer, filed November 6th, 1883, for the following reasons:

1. It is no part of the pleadings, and it is not competent for defendants to support the answer by affidavits of strangers to the record.
2. The affidavit is not a pleading in the case.
3. Such affidavit is incompetent, immaterial, and impertinant.

And plaintiffs move to strike such affidavit from the answer, for reasons above given.

(Signed) L. C. BLANCHARD & G. C. MORGAN,
Att'ys for Pl'ff-.

[Endorsed:] James M. Drennan *et al. vs.* Thomas Graham *et al.* Motion to strike. Filed Nov. 7, 1883. D. R. Moore, clerk. Blanchard & Morgan, att'ys for pl't'ffs.

204 *Reply to Defendants' Amendment to Answer.*

Circuit Court of the State of Iowa, in and for Mahaska County. October Term, 1883.

JAMES M. DRENNAN *et al. v.* THOS. GRAHAM *et al.*

Now come the plaintiffs, and for reply to defendants' amendment to answer filed herein state:

1. Replying to paragraph one of defendants' said amendment to answer, plaintiffs deny that "each and all or any of the allegations of fraud and fraudulent representations made by the officers and agents of the railroad company to induce the voters of Prairie township to vote the said tax, and set out in the original petition and amendment thereto in this cause, were at the time the defendants' railway company commenced building its road from the town of Sharon northwesterly to Newton, Jasper County, Iowa, as fully known as at the commencement of this suit."

205 But plaintiffs aver that the said fraud and fraudulent representations complained of alleged and set out in plaintiffs' petition and amendments thereto did not become known to plaintiffs until some time in the spring of the year 1882, a long time after the said work had been commenced, and about the termination of the two years from the date of said election; that up to the said time plaintiffs were informed by the officers of said railroad company and believed that the line of railroad would be built east or southeast from New Sharon by the said railroad company as promised, represented, and agreed by the said company prior to the voting of said tax and as an inducement for the voting of said tax; that the plaintiffs first learned of the proposed abandonment of the route east from New Sharon some time in the spring of the year 1882; that immediately on hearing of the proposed abandonment these plaintiffs and other citizens and tax payers of Prairie
206 township called and held an indignation meeting and selected and appointed a committee to go and see the president and officers of the railroad company, defendant herein, and remonstrate against the said abandonment, and to notify the said railroad company that the collection and payment of the Prairie township tax would be resisted if the said route east from New Sharon was abandoned by the said company; that the committee so selected and appointed at said meeting did go and see the president of the said railroad company, Mr. S. C. Cook, and did orally present the said remonstrance and notice to the said S. C. Cook, president aforesaid, as instructed; that the said president of said company informed the said committee that if Oskaloosa township, Mahaska county, Iowa, would vote a tax in aid of the said railroad company the line east of New Sharon would be abandoned, and that the said com-
207 pany would run south from New Sharon to Oskaloosa over the Central Iowa railway track and build east to the Mississippi river from Oskaloosa, instead of from New Sharon, and that the company proposed to make the change because it could make seventy thousand dollars by the operation.

Plaintiffs further replying to said paragraph one of defendants' amendment to answer, deny that they stood by and allowed work to be done and a large sum of money expended on the said line of road from New Sharon northwest, having knowledge of the said fraud and fraudulent representations, and aver that when said work was commenced and until the said spring of 1882 said fraud had not come to their knowledge, and they did not know that the representations set forth in the petition and amendment thereto filed herein were false and fraudulent, and plaintiffs further aver that as soon as the said fraud and the falsity of said representa-
208 tions became known to them they notified the said railroad company of the said false and fraudulent representations and fraud, and notified said company of their intention to resist the said tax on account of said fraud as aforesaid.

Plaintiffs, further replying to said paragraph one, deny that any work was done or any money expended on the said line of road from New Sharon northwesterly to Newton, in Jasper county, Iowa,

on the faith of the said Prairie township tax, after the abandonment of the said line east from New Sharon, but aver that the said company relied on taxes voted at Oskaloosa, Iowa, and at points east of Oskaloosa, to reimburse it for the loss of the Prairie township tax; and its president stated that the company would still make $70,000 by the change.

II.

Replying to paragraph two of said amendment to defendants' answer, plaintiffs admit that two of these plaintiffs, to wit, H. J.
209 Vail and George Carson, were officers of said railroad company at the time and prior to the voting of the said tax in Prairie township, and that the said company was organized in New Sharon, Iowa; but plaintiffs aver that the said H. J. Vail and George Carson ceased to be officers of said company long before any work was done or money expended on said line of road, and that when the control of said company, its rights and franchises, was transferred to S. C. Cook, president aforesaid, by the said H. J. Vail and George Carson and the other retiring officers and members of said company, it was with the express agreement and understanding that the said S. C. Cook, president aforesaid, should build or run to New Sharon an independent competing line of railroad from the east, and notified him of all representations that had been made to the voters of said Prairie township concerning said eastern line for the purpose of inducing them, the voters, to vote for the said tax.
210 Plaintiffs, further replying to said paragraph two, admit that they had actual notice of the commencement of work on the said line northwest from New Sharon, and aver that work was commenced on the route east of New Sharon first, and that work continued on the said route east from New Sharon until some time in the spring of 1882, when the said route east from New Sharon was abandoned, and that the said fraud and the falsity of said representations set out in plaintiffs' petition and amendments thereto did not become known to plaintiffs until said time, and that the defendant railroad company was notified by the plaintiffs of said fraud and fraudulent representations as aforesaid when the same became known to them.

Wherefore plaintiffs deny that — are estopped from setting up any defense of fraud against the payment and collection of said tax, and ask that the preliminary injunction issued herein be
211 coninued in force until the cause heard on its merits and at the final hearing of this cause the same be made perpetual, and that the plaintiffs have the relief prayed for in their petition and amendments thereto filed herein.

(Signed) L. C. BLANCHARD AND
GEO. C. MORGAN,
Attorneys for Plaintiffs.

STATE OF IOWA, *Mahaska County:*

I, Geo. C. Morgan, on my oath, say that I am one of the attorneys for plaintiffs in the above-entitled cause, and one of the parties

to said suit; that I have read the foregoing reply to the amendments to defendants' answer; that I have personal knowledge of the matters and things herein stated and alleged, and that the same are true, as I verily believe.

(Signed) GEO. C. MORGAN.

Subscribed & sworn to before me, by the said Geo. C. Morgan, at Oskaloosa, Iowa, this 7th day of November, 1883.

(Signed) L. C. BLANCHARD.

[Endorsed:] Jas. M. Drennan *et al. vs.* Thos. Graham *et al.* Reply to amendment to answer. Filed Nov. 8, 1883. D. R. Moore, clerk. L. C. Blanchard, G. C. Morgan, att'ys for pl't'ffs.

212 *Motion to Strike Answer of John H. Warren.*

In Circuit Court of Mahaska County, Iowa. March Term, 1884.

JAMES M. DRENNAN *et al. vs.* THOMAS GRAHAM *et al.*

Now come plaintiffs and move to strike the answer of John H. Warren from file, for the reason that said Warren was adjudged in default long before said answer was filed, and said default has never been set aside nor has any application ever been made to purge the default or for leave to answer.

L. C. BLANCHARD &
G. C. MORGAN,
Att'ys for Pl'ffs.

[Endorsed:] James M. Drennan *vs.* Thomas Graham *et al.* Motion to strike ans. of John H. Warren. Filed Mar. 26, 1884. D. R. Moore, clerk.

213 *Motion to Transfer.*

In the Circuit Court of Mahaska County, State of Iowa. April Term, A. D. 1884.

JAMES M. DRENNAN *et al.*

vs.

THOMAS GRAHAM, Trustee, ALFRED SULLY, *et al.*

Now comes defendant, Alfred Sully, and moves the court to make an order transferring this cause to the United States circuit court for the district of Iowa upon the filing of the petition and bond herein, and to proceed no further with said cause in this court.

LAFFERTY & NEEDHAM
& R. A. SANKEY,
Att'ys for Def't Sully.

[Endorsed:] James M. Drennan *vs.* Thomas Graham *et al.* & Alfred Sully. Motion to transfer to U. S. circuit court. Filed Mar. 25, 1884. D. R. Moore, clerk.

214 *Petition for Removal to the Circuit Court of the United States, District of Iowa.*

In the Circuit Court of the State of Iowa for Mahaska County. On Equity.

JAMES N. DRENNEN *et al.*
vs.
THOMAS GRAHAM, Trustee, THE C., B. & P. R. R. Co., ALFRED SULLY, *et al.*

To said court:

Your petitioner, Alfred Sully, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in this suit is between citizens of the different States.

That your petitioner was at the time of the commencement of this suit, and still is, a resident and citizen of the State of New York.

That each and all of the plaintiffs in this action were at the commencement of this suit, and still are, citizens and residents of
215 of the State of Iowa.

That the defendants Thomas Graham, Hugh Cathcart, and Plummer Edwards [are] trustees of Prairie township, Mahaska county, Iowa.

The defendant, John H. Warren, treasurer of Mahaska county, Iowa, and the defendants, The Chicago, Burlington & Pacific Railroad Company, were each at the commencement of this suit, and still are, citizens and residents of the State of Iowa.

Your petitioner further represents to this honorable court that he is the owner of the tax in controversy in this action, and that all of the other defendants are mere nominal parties, who have no interest in said tax, and that said tax is the entire object-matter of this suit.

There can be a final determination of the controversy in this suit and of all the questions involved therein without the pres-
216 ence of either or any of the other defendants as parties thereto.

That the controversy in this suit is, in fact, wholly between citizens of different States, and can be fully determined as between them without the presence of either or any of the defendants except your petitioner.

That this action is brought for the purpose of restraining and enjoining this defendant from proceeding to collect the tax of Prairie township, and to have said tax declared illegal, null, and void, and to have the same cancelled and its collection perpetually enjoined.

Your petitioner further states that this suit has not been tried; that it is an equitable action, and this is the first term at which said suit could be tried, and that it has not yet been reached for trial.

That it is now pending for trial in the circuit court of the State of Iowa for said county of Mahaska.

That your petitioner desires to remove this suit into the
217 circuit court of the United States for the district of Iowa in pursuance of the acts of Congress in that behalf provided.

And your petitioner tenders herewith a bond with good and sufficient surety for his entering in said court of the United States on the first day of its next session a copy of the record of this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Iowa; and he will ever pray.

LAFFERTY & NEEDHAM &
R. A. SANKEY,
Att'ys for Pl't.

218 STATE OF IOWA, }
Mahaska County, } *ss:*

I, R. A. Sankey, being sworn, say: I am one of the attorneys for Alfred Sully, the petitioner herein, that I make this affidavit, because said Sully is absent at his residence in New York; that I have read the foregoing petition and know the contents thereof, and that the several statements and allegations therein contained are true, as I verily believe.

R. A. SANKEY.

Subscribed and sworn to by said R. A. Sankey before me and in my presence, this 22nd day of April, A. D. 1884.

[SEAL.] JOHN C. WILSON,
Notary Public.

[Endorsed:] James M. Drennen *et al. vs.* Thomas Graham *et al.* Petition for removal to the circuit court. Filed Mar. 25, 1884. D. R. Moore, clerk.

219 Know all men by these presents, that we, Alfred Sully, as principal, and S. C. Cook and James Wilson, as surety, are hereby held and firmly bound unto James M. Drennen *et al.* in the penal sum of five hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The conditions of this obligation is such, that if the said Alfred Sully shall enter and file, or cause to be entered and filed, in the next circuit court of the United States in and for the district of Iowa, on the first day of its session, copies of all process and pleadings and the depositions, testimony, and other proceedings in a certain suit or action now pending in the circuit court of the county of Mahaska and State of Iowa, in which James M. Drennan *et al.* are plaintiffs, and Alfred Sully and others are defendants, and shall

do such other appropriate acts as by the act of Congress
220 in that behalf are required to be done upon the removal of such suit from said State court into the said United States court, then this obligation to be void; otherwise, of force.

Dated March 22, 1884.

ALFRED SULLY,
By R. A. SANKEY,
His Att'y.
S. C. COOK.
JAMES WILSON.

STATE OF IOWA, } ss:
Jasper County, }

I, M. P. Doud, clerk of the district court of Iowa in and for Jasper county, do hereby certify that the sureties on the within and foregoing bond are good and sufficient security for double the amount of the penalty of said bond, and if the said bond was presented to me I would approve the same.

Witness my hand and the seal of this court, this 22nd day of March, A. D. 1884.

[SEAL.]

M. P. DOUD,
Clerk of the District Court,
By GEO. W. HARLAN, *Deputy.*

221 [Endorsed:] James M. Drennen *et al. vs.* Thomas Graham *et al.* & Alfred Sully. Bond for removal. Filed and approved this 25th day of March, A. D. 1884. D. K. Moore, cl'k. H. P. Weaver, d'p'y

222 STATE OF IOWA, } ss:
Mahaska County, }

Be it remembered that at a term of the district court within and for the county and State aforesaid, begun and holden at the court-house in Oskaloosa, on the, to wit, *on the* 7th day of May, A. D. 1883, Hon. J. K. Johnson, sole judge, of the sixth judicial district of said State presiding, on the first day of said term, it being the 7 day of May, A. D. 1883, among other the following proceedings were had, done, and entered of record, to wit:

J. M. DRENNEN *et al.* *vs.* THOMAS GRAHAM, HUGH CATHSART, & PLUMMER EDWARDS *et al.*	No. 3383. On Injunction.

Now, on this day, this cause came on for hearing, plaintiffs appearing by their attorneys, Messrs. Blanchard & Williams and Geo. C. Morgan, Esq., and the defendants, by their attorneys, and by
223 agreement of parties in open court defendants to have until Tuesday of third week of this term of court to plead.

And afterwards, on the 23rd day of May, 1883, the same being the

15th day of said May term, 1883, the following proceedi ngs were had by said court in said cause, to wit:

J. M. DRENNEN *et al.*
vs.
THOMAS GRAHAM *et al.* } On Injunction.

Now, on this day, this cause came on for hearing on motion of defendants for change of venue, and, the court being advised in the premises, it is ordered by the court that this cause be transferred to circuit court of Mahaska county, Iowa, on account of the judge of this court having been of counsel in the case.

And afterwards, to wit, this cause coming on for hearing in the circuit court of said county to which the same had been change-
224 for trial on the 11th day of October, 1883, the same being the second day of the October, 1883, term of said court, the following proceedings were had in said cause, to wit:

J. M. DRENNEN *et al.*
vs.
THOMAS GRAHAM *et al.* } On Injunction.

Now, on this day, this cause came on for hearing, plaintiffs appearing by their attorneys, Messrs. Blanchard & Williams and Geo. C. Morgan, Esq., and it appearing to the court that all of the defendants, except Alfred Sully and the C., B. & P. R. R. Co., had been duly served with the pendency of this action according to law and failed to appear and defend thereto as required by law, it is ordered by the court that default be, and the same is hereby, entered against them.

And afterwards, on the 18th day of October, 1883, the same being the 8th day of said term of court the following proceedings were had in said cause, to wit:

225 J. M. DRENNEN *et al.*
vs.
THOMAS GRAHAM *et al.* } On Injunction.

Now, on this day, this cause coming on for hearing, plaintiffs appearing by their attorney-, Messrs. Blanchard & Williams and Geo. C. Morgan, Esq., and the defendants appearing by their attorneys, Messrs. Lafferty & Needham and A. R. Sankey, Esq., motion to strike allegations of the petition overruled, except as to parties too numerous to be brought before the court, as to which motion is sustained; motion for more specific statement of petition sustained as to 1st, 2nd, and 3rd of paragraphs of motion overruled as to remainder.

Both parties except to this ruling. Defendant given until next Monday to plead, if he shall so elect.

And afterwards, on the 22nd day of October, 1883, being the 11th day of said term, the following proceeding were had in said cause, to wit:

226 J. M. DRENNEN *et al.* } On Injunction.
vs
THOMAS GRAHAM *et al.* }

Now, on this day, this cause came on for hearing upon the demurrer to petition, plaintiffs appearing, by their attorneys, and defendants appearing by their attorneys, and the court having heard the evidence, and being fully advised in the premises, said demurrer is overruled. To which ruling of the court defendants at the time excepted, and defendant is given until next Monday morning to answer.

And afterwards, on the 25th day of October, 1883, being the 14th day of said term, the following proceedings were had, to wit:

J. M. DRENNER *et al.* } On Injunction.
vs.
THOMAS GRAHAM *et al.* }

Now, on this day, this cause came on for further hearing, plaintiffs appearing by their attorneys, and defendants appearing
227 by their attorneys, and plaintiff is given leave to amend by next Monday morning, making new and additional parties plaintiff.

And afterwards, to wit, Nov. 2, 1883, being the 21st day of said October, 1883 term of said court—

J. M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

Now, on this day, this cause came on for hearing, and the same is set down for trial on depositions, plaintiffs to file by January 15, 1884, defendants by March 1, 1884; rebuttal by first day of next term of this court.

And on the 7th day of November, 1883, being the 25th day of said October term, the following proceedings were had in said cause, to wit:

J. M. DRENNEN *et al.* } On Injunction.
vs.
THOMAS GRAHAM *et al.* }

228 Now, on this day, this cause coming on for further hearing, defendants given leave to amend answer.

Afterwards, on the 8th day of November, 1883, being the 26th of said October term, the following proceedings were had, to wit:

J. M. DRENNEN *et al.* } On Injunction.
vs.
THOMAS GRAHAM *et al.* }

Now, on this day, this cause coming on for hearing, on motion to strike affidavit of David Morgan, annexed to amendment to answer,

plaintiffs appearing, by their attorneys, Geo. C. Morgan, Esq., and Messrs. Blanchard & Williams, defendants appearing by their attorneys, Messrs. Lafferty & Needham and A. R. Sankey, Esq., and the court hearing the evidence, and being advised in the premises, motion sustained. To which ruling of the court defendants except, and afterwards cause was heard on motion of defendants to dissolve the injunction, and the court being advised in the
229 premises, overrules the motion, and defendants except.

And afterwards, on the 25th day of March, 1884, the same being the 2nd day of the March, 1884, term of said court, the following proceedings were had in said cause, to wit:

J. M. DRENNEN *et al.*
vs.
THOMAS GRAHAM *et al.*
} On Injunction.

Now on this day this cause came on for hearing upon the application of Alfred Sully, for removal of this cause to the U. S. circuit court, plaintiffs appearing by their attorneys, Messrs. Blanchard & Williams and Geo. C. Morgan, Esq., defendant Sully appearing by his attorneys, Messrs. Lafferty & Needham and A. R. Sankey, Esq., and the court having heard the evidence, and being fully advised in the premises, motion overruled, and he excepts.

And afterwards, on the 28th day of March, 1884, the same
230 being the 5th day of the said March, 1884, term of said court, the following proceedings were had:

J. M. DRENNEN *et al.*
vs.
THOMAS GRAHAM *et al.*
} On Injunction.

Now on this day this cause came on for hearing, plaintiffs appearing by their attorneys, R. A. Sankey, Esq., & Messrs. Lafferty & Needham, defendants appearing by their attorneys, Messrs. Blanchard & Williams and Geo. C. Morgan, Esq., and defendant Sully enters protest against being compelled to proceed to trial in State court, and objects that State court has not jurisdiction; motion to strike answer of defendant Warren sustained; trial to court on depositions and written testimony, schedule of which is taken by reporter and filed with the papers; cause to be taken under advisement and argued in writing in vacation; plaintiffs to present their argument in 30 days from the rising of court, defendants theirs by 40 days thereafter, & plaintiffs 15 days to reply.

231 STATE OF IOWA,
Mahaska County, } *ss:*

I, D. R. Moore, clerk of the circuit court of Iowa, in and for said county, do hereby certify that the foregoing is a full, true, and complete copy of all pleadings and papers filed in this court in the foregoing cause, except notice of appeal to supreme court and bill of

exceptions, as full and complete as the originals which remain in this office.

Witness my hand and the seal of said court affixed, this sixteenth day of April, A. D. 1884.

[SEAL] (Signed) D. R. MOORE, *Clerk.*

$1.50, paid by R. A. Sankey.

232 And on the 13th day of May, 1884, the defendant, Alfred Sully, by R. A. Sankey, his solicitor, filed in the clerk's office of said court a *præcipe* for appearance in said cause in the words and figures following, to wit:

233 *Præcipe for Appearance.*

United States Circuit Court, Southern District of Iowa.

J. M. DRENNEN *et al.*
vs.
THOMAS GRAHAM & ALFRED SULLY *et al.* } No. —.

The clerk of said court will please enter my appearance for the defendant, Alfred Sully, and L. C. Blanchard & Geo. C. Morgan for the plaintiffs in above cause, and docket the same on chancery docket.

(Signed) R. A. SANKEY,
Attorney for Alfred Sully, Def't.

The names of all parties for whom appearance is entered must be written in full.

(Endorsed:) U. S. circuit court, southern district of Iowa. No. —. J. M. Drennen *et al. vs.* Thomas Graham *et al.* *Præcipe* for appearance of defendant. R. A. Sankey, attorney. Filed May 13, 1884. Ed. R. Mason, clerk.

234 And on the 13th day of May, 1883, the complainants, James M. Drennan *et al.*, by L. C. Blanchard and Geo. C. Morgan, their solicitors, filed in said cause a motion and affidavit to remand the said cause in the words and figures following, to wit:

235 *Affidavit.*

In Circuit Court of the United States, Southern District of Iowa.

JAMES M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

STATE OF IOWA, *Mahaska County,* } *ss:*

I, George C. Morgan, being first duly sworn according to law, on oath say: That I, as executor of the estate of Thomas Graham, am one of the plaintiffs in the above-entitled cause; that the tax in controversy in said cause is a three per cent. voted by the electors of Prairie township, Mahaska county, Iowa, on the 11th day of May,

A. D. 1880, to aid in the construction of the New Sharon Coal Valley and Eastern railroad; that there is charged and assessed against the said estate on the tax books of said county by reason of said tax the sum of one hundred fifteen & $\frac{23}{100}$ dollars, and no
236 more; that I was a resident and tax payer of said township at the time said tax was voted, and I am personally acquainted with each and all of plaintiffs in said cause; that I have carefully examined the tax list and tax books of said county, and I know of my own personal knowledge that the taxes levied or charged to neither one of the plaintiffs in this cause, nor against neither of the firms who are plaintiffs in said cause, amounts to the sum of $500.00, nor to the value of five hundred dollars.

That the largest tax assessed to any one of the plaintiffs, individuals, or firms, being the full three per cent. voted, is against plaintiff Mary A. Crookham, executrix, which is two hundred and fifty-eight dollars.

That I have read the pleadings in said cause and am familiar therewith, and know the contents thereof, and who are the plaintiffs in said cause.

(Signed) GEO. C. MORGAN.

237 STATE OF IOWA, } ss:
Mahaska County, }

Subscribed and sworn to before me and in my presence by the said George C. Morgan, this 10th day of May, A. D. 1884.

[SEAL.] (Signed) L. C. BLANCHARD,
Notary Public in and for Mahaska County, Iowa.

[Endorsed:] Affidavit of Geo. C. Morgan.

238 In Circuit Court of the United States, Southern District of Iowa.

JAMES M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

STATE OF IOWA, } ss:
Mahaska County, }

I, M. D. Gilchrist, being duly sworn according to law, on oath say: That I am the present county treasurer of Mahaska county, State of Iowa, and I have in my possession and under my control all of the tax lists of said county, and it is a part of my duties as county treasurer to collect the taxes in said county, including all taxes voted in aid of any railway company by any township or other municipal corporation in said county. And I further say that I have carefully examined the tax lists of Prairie township, in said county, and the assessment and levy of a three per cent. tax voted by the electors of Prairie township on the 11th day of
239 May, 1880, in aid of the construction of the New Sharon Coal Valley and Eastern railroad, and I say that the full three per cent. tax so voted, being the tax in controversy in above cause, does not amount to or equal in value the sum of five hundred dollars

against any single individual, or against any firm of said township, or against any individual or firm who are tax payers of said township. I further say that the total amount of said three per cent. tax assessed to any one of the following-named parties, individuals, or firms does not amount to or equal the sum of five hundred ($500,00) dollars, viz: James M. Drennen, W. L. McAllister, C. H. Kramer, M. D. Burket, J. W. Bowdle, Osman Watland, H. W. Whitacre, H. C. Gallaher, A. Cadwallader, J. N. Penland, J. L. Sanders, J. E. Starkie, F. A. Winder, Charles Freighley, J. S. Clements, Geo. A. Roberts, O. G. Kuendson, S. Janey, William Burkes, A. Rockwell,
L. Garner, John Verstug, G. W. Cawell, Kalback & Company,
240 Kalback, Sons & Company, S. Bowdle, David Fessler, A. J.
Winder, John Nicholson, G. B. Gatlin, William Widdow, J. S. Ransdell, David Steen, H. T. Wright, O. Wildman, David Stanton, Robert Thomas, J. S. Beal, Vickers & Crawford, Sanford Vickers, F. E. Crawford, P. W. Phillips, O. Flemming, U. Hamblen, J. R. Jackson, C. T. Bowen, Thomas Watland, J. Andre, E. C. Hull, A. Ridpath, H. J. Vail, George Carson; G. C. Morgan and Jonathan Andre, executors of the estate of Thomas Graham, deceased; Thomas Graham, the estate of Thomas Graham, Martha E. Andre, George Erdman, Estate of P. Heitsman, deceased, J. B. Heitsman, trustee; August Sonneland, S. Ellis, H. Morris, G. Briggs, Martha Briggs, E. C. Quaintance, J. B. Hart, G. G. Strom, M. Dysart, C. T. Sexton, T. Cobb, Mahlon Stout, John Morgan, Mary Graham, S. M. Philbrook, Carroll & Hueston, E. B. Hamaker, Pierce Ratliff, M. A. Munsell, Loftus Fox, Richard Hansell, James Quinn, Hiram Holler, J. N. H.
Campbell, Allen Godby, Girard Ryan, James Fisher, A. J.
241 Bartlett, Nicholas Beal, C. Huntz, W. Hibbs, Jacob Harper,
Sidney Harper, Joseph Williams, William Harper, J. Kalback & Son, J. W. Carr, estate of Horace Crookham, deceased, Mary A. Crookam, executrix, the foregoing being the parties plaintiffs in the above-entitled cause.

(Signed) M. D. GILCHRIST.

STATE OF IOWA, }
Mahaska County, } *ss:*

Subscribed and sworn to before me, and in my presence, by the said M. D. Gilchrist, this 10th day of May, 1884.

[SEAL.] (Signed) L. C. BLANCHARD,
Notary Public in and for Mahaska County, Iowa.

[Endorsed:] Affidavit of M. D. Gilchrist.

242 *Motion to Remand this Cause to the State Court from which Removed.*

In the Circuit Court of the United States, in and for the Southern District of Iowa.

JAMES M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

Now come the plaintiffs in the above-entitled cause and move to remand said cause to the circuit court of Mahaska county, State of

Iowa, and to strike the same from the docket of this court, for the following reasons:

First. This court has no jurisdiction of the parties to this action.

Second. This court has no jurisdiction of the subject-matter in dispute in said cause.

Third. The petition for removal was not filed within the
243 time required by law, viz., before or at the term at which said cause could be first tried, and before the trial thereof. Said petition for removal was not filed or made at the appearance term after the action was brought, nor at the second term after the appearance term, but was made and filed at the third term of court after said suit was brought in the State court.

Fourth. The matter in dispute, exclusive of costs, does not exceed the sum or value of five hundred dollars, as shown by the pleadings and affidavits hereto attached.

Fifth. It does not affirmatively appear that the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, but it does affirmatively appear that the matter in dispute is less than the sum or value of five hundred dollars.

244 Sixth. There is no diversity of citizenship between plaintiffs and defendants, and the controversy is not severable.

Seventh. All the parties plaintiff are residents and citizens of Iowa and all the parties defendants are residents and citizens of the State of Iowa, except Alfred Sully, and all the defendants are necessary and indispensible parties to the suit.

Eight-. The defendant, Alfred Sully, waived his right to a removal to this court, if such right ever existed, by appealing from the decision of the State court to the supreme court of the State of Iowa, wherein said action is still pending.

Ninth. The petitioner for removal to this court, Alfred Sully, has failed to file a complete copy of the record of said cause in this court, as required by law.

245 Tenth. The petition for removal was not filed or made until after a trial in the State court on the demurrer.

In support of this motion the plaintiffs refer to the attached affidavits of M. D. Gilchrist and George C. Morgan, which affidavits are made a part hereof.

(Signed) L. C. BLANCHARD &
GEORGE C. MORGAN,
Att'ys for Plaintiffs.

(Endorsed:) James M. Drennen *et al. vs.* Thomas Graham *et al.* Motion to remand. Filed May 13, 1884. Ed. R. Mason, clerk. L. C. Blanchard & Geo. C. Morgan, att'ys for pl't'ff.

246 And on the 14th day of May, 1884, an affidavit of R. A. Sankey was filed in said cause in the words and figures following, to wit:

247 *Affidavit for Def't.*

United States Circuit Court, Southern District of Iowa.

J. M. DRENNEN *et al. vs.* THOMAS GRAHAM *et al.*

I, R. A. Sankey, being sworn, say: That I am the attorney for Alfred Sully, the defendant transferring this cause to this court, and have been his attorney during the entire pendency of this action; that no service had been made on the def't Sully in above-entitled cause until after said cause was pending in the circuit court of Mahaska county, Iowa, and that no appearance was made for him in the district court of said county; that the first appearance of said Sully to this action was when the answer was filed therein in the circuit court of Mahaska county, which was the appearance term of this cause; that the transfer of said cause from the district
248 court was made — request of the judge thereof because he had been counsel in the matters involved herein without issue being made and because the same could not be made before said judge and before Alfred Sully became a party defendant to said action, and that the application for removal was made at the first term at which said cause could be tried, and before the time thereof.

(Signed) R. A. SANKEY.

Subscribed before me and in my presence by R. A. Sankey, this 14th day of May, 1884.

(Signed) E. R. MASON, *Clerk.*

(Endorsed:) 2042. Eq. Drennen *vs.* Graham *et al.* Affidavit R. A. Sankey. Filed May 14, 1884. Ed. R. Mason, clerk.

249 And on the 14th day of May, 1884, a stipulation as to filing testimony was filed in said cause in the words and figures following, to wit:

250 *Agreement.*

Circuit Court Mahaska Co., Iowa.

JAMES M. DRENNEN *et al.*

vs.

THOMAS GRAHAM *et al.* & ALFRED SULLY.

It is hereby agreed by and between the parties to the above-entitled cause that the original testimony taken and filed in this cause may be taken to the United States circuit court, instead of copies of the same, and filed therein with the same force and effect as if copies had been made and filed, the plaintiffs waiving nothing by this agreement save and except any objections to a copy of the record not having been made and filed in said circuit court. The only

purpose of this agreement is to save costs of transcript in case def'ts wish to file transcript in said court.

(Signed) L. C. BLANCHARD &
GEO. C. MORGAN,
Att'ys for Pl'tffs.

(Signed) LAFFERTY & NEEDHAM, &
R. A. SANKEY,
Att'ys for Def'ts.

251 (Endorsed:) James M. Drennen *et al. vs.* Thomas Graham *et al.* & Alfred Sully. Agreement to file original testimony in United States circuit court. Filed May 14, 1884. Ed. R. Mason, clerk.

252 And on the 16th day of May, 1884, in the record of the proceedings of said court is an entry in said cause in the words and figures following, to wit:

253 United States Circuit Court, Southern District of Iowa, Central Division. May Term. 1884.

FRIDAY, *May* 16, 1884.

JAMES M. DRENNAN *et al.*
vs.
THOMAS GRAHAM *et al.* } No. 2042. Eq.

This cause came on this day for hearing upon complainants' motion to remand this cause. Complainants appear by L. C. Blanchard and George C. Morgan, and defendant, Alfred Sully, by R. A. Sankey, and after argument of counsel thereon the said motion to remand is submitted to the court, and the court being now fully advised in the premises, it is ordered that the said motion to amend be, and the same is hereby, sustained.

It is therefore ordered and decreed that this cause be, and the same is hereby, remanded to the circuit court of Iowa in and for Mahaska county, at the cost of said Alfred Sully.

It is further ordered, adjudged, and decreed that said defendant, Alfred Sully, pay the costs herein taxed, at $——, and that execution issue therefor; to which ruling the defendant, Alfred Sully, at the time, duly excepted.

254 And on the 19th day of May, 1884, in the record of the proceedings of said court is an entry in said cause, in the words and figures following, to wit:

255 United States Circuit Court, Southern District of Iowa, Central Division. May Term, 1884.

MONDAY, *May* 19, 1884.

JAMES M. DRENNAN *et al.*
vs.
THOMAS GRAHAM, ALFRED SULLY, *et al.* } No. 2042. Eq.

This cause coming on this day for hearing, the defendant, Alfred

Sully, in open court, prays an appeal to the Supreme Court of the United States, which is allowed, and the appeal bond herein is fixed at the sum of one thousand dollars, with sureties to be approved by one of the judges of this court.

256 And on the 21st day of May, 1884, an appeal bond was filed in said cause, in the words and figures following, to wit:

257 Circuit Court of the United States, Southern District Iowa, Central Division.

JAMES L. DRENNEN, W. L. MCALLISTER, C. H. KRAMER, *et al.*
vs.
THOMAS GRAHAM, HUGH CATHCART, & PLUMMER EDWARDS, Trustees, &c., ALFRED SULLY *et al.*
} 2042 Eq.

Know all men by these presents, that we, Alfred Sully as principal and S. C. Cook and Samuel Merrill as sureties, are held and firmly bound unto James L. Drennen *et al.* in the sum of one thousand dollars, to be paid to the said James L. Drennen *et al.*, their then heirs, executors, and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and ad-
258 ministrators, firmly by these presents.

Sealed with our seals. Dated this 21st day of May, 1884.

Whereas the above-named Alfred Sully hath prayed an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States, southern district Iowa, central division;

Now, therefore, the condition of this obligation is such, that if the above-named Alfred Sully shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Sealed and delivered in presence of—

(Signed) ALFRED SULLY,
By R. A. SANKEY,
His Attorney.

(Signed) S. C. COOK.
(Signed) SAM'L MERRILL.

259 UNITED STATES OF AMERICA, *District of Iowa*, } *ss:*

S. C. Cook and Samuel Merrill, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

(Signed) S. C. COOK.
(Signed) SAM'L MERRILL.

Sworn to before me, this 21st day of May, 1884, by S. C. Cook.

[SEAL.] (Signed) JOHN C. WILSON,
Notary Public in and for Jasper County, Iowa.

Sworn to and subscribed before me, by Sam'l Merrill, this 21 day of May, A. D. 1884.

[SEAL.] (Signed) REED H. PARR,
Notary Public, Polk Co., Io'a.

I approve the above bond and the sufficiency of the sureties thereto.

May 21, 1884.

(Signed) J. M. LOVE, *Judge.*

260 (Endorsed:) 2042. Eq. C. C't U. S., Io'a. James M. Drennen *et al. vs.* Thomas Graham, Hugh Cathcart, Plummer Edwards, trustees, Alfred Sully *et al.* Appeal bond. Filed May 21, 1884. Ed. R. Mason, clerk.

261 And on the 29 day of September, 1884, an original citation was filed in said cause in the words and figures following, to wit:

262 The United States of America to James M. Drennan, W. L. McAllister, C. H. Kramer, M. D. Burket, J. W. Bowdle, Osman Watland, H. N. Whitacre, H. C. Gallaher, A. Cadwallader, I. N. Penland, J. L. Saunders, J. E. Starkie, F. A. Winder, Chas. Freighly, J. S. Clements, Geo. A. Roberts, O. G. Knudson, S. Janney, Wm. Burkes, A. Rockwell, L. Garner, John Versteeg, G. W. Carrell, Kalbach & Co., Kalbach Sons & Co., I. Bowdle, D. Fessler, A. S. Winder, John Nicholson, G. B. Gatlin, Wm. Widdows, J. S. Ransdell, David Steen, H. T. Wright, O. Wildman, David Stanton, Robert Thomas, J. S. Beal, Vickers & Crawford, Sandford Vickers, F. E. Crawford, P. W. Phillips, O. Fleming, W. Hamblen, J. R. Jackson, C. T. Bowen, and others, tax payers of Prairie township, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to an appeal
263 filed in the clerk's office of the United States circuit court, southern district of Iowa, central division, wherein Alfred Sully is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James M. Love, judge of the circuit court U. S., southern dist. Iowa, this 21 day of May, in the year of our Lord one thousand eight hundred and eighty-four.

J. M. LOVE, *Judge.*

264 STATE OF IOWA, } ss:
Mahaska County, }

I, Frank Wilson, being sworn, do hereby certify and return that I received the annexed citation or summons on the 16th day of June, A. D. 1884, for service, and that on the 16th day of June, A. D. 1884, at Prairie township, Mahaska county, State of Iowa, I served the same personally on W. L. McAllister, C. H. Kramer, M. D. Bur-

ket, J. H. Bowdle, H. N. Whitaker, H. C. Gallaher, A. Cadwallader, J. N. Penland, J. L. Saunders, J. E. Starkie, F. A. Winder, O. G. Knudson, G. W. Carrell, I. Bowdle, D. Fessler, G. B. Gatlin, William Widows, J. S. Ransdell, H. T. Wright, O. Wildman, Robert Thomas, Sandford Vickers, F. E. Crawford, Vickers & Crawford, defendants herein named, by reading said notice to each of said persons, and by then delivering to each of said persons personally a copy of said notice.

And on the same day, and at the same place, I personally served said notice on J. R. Jackson, by reading said notice to Julia Jackson, his daughter, a member of his family, over sixteen years [of] age, and delivering to her a copy of the same.

And on the same day, and at the same place, I personally served said notice on John Versteeg, by reading said notice to Aart Versteeg, his son, a member of his family, over eighteen years of age, and delivering to him a copy of the same.

And on the 17th day of June, A. D. 1884, at Prairie town-
265 ship, Mahaska county, State of Iowa, I served said notice personally on John Nicholson, James M. Drennan, Charles Freighly, J. S. Clements, Geo. A. Roberts, S. Jany, William Burkes, David Steen, P. N. Philips, O. Fleming, David Stanton, Osman Watland, by reading said notice to each of them, and by delivering to each of them personally a copy of said notice, except to said J. S. Clements, which was served by reading said notice to Susie Clements, his wife, and by delivering to her a copy of the same.

And on the same day, and at the same place, I served said notice on Geo. Roberts, by reading said notice to Emily E. Roberts, his wife, and delivering to her a copy of the same; and on W. H. Kalbach, for the firm of Kalbach & Co. and for Kalbach Sons & Co., by reading said notice to him, and delivering to him a copy of the same; and L. Garner, by reading to Elizabeth Garner, his wife, and by delivering to her a copy of said notice; and on W. Hamblen, by reading said notice to Mary Hamblen, his wife, and delivery to her a copy of the same.

And on June 18th, 1884, at the same place, I served said notice on J. S. Beal, by reading said notice to Cynthia A. Beal, his wife, and delivering to her a copy of the same; and on C. T. Rowen, by reading said notice to Jennie Bowen, his wife, and delivering to her a copy of said notice.

A. J. Winder not found, having removed from the State of Iowa,
and A. Rockwell having since the commencement of this
266 action deceased; and I hereby returned this notice duly served.

FRANK WILSON.

Subscribed and sworn to before me and in my presence by Frank Wilson, this 21st day of June, A. D. 1884.

[SEAL.] S. C. COOK,
Notary Public in and for Jasper County, Iowa.

Fees for service, $18.50.

11—1115

P'd by Alfred Sully.

267 [Endorsed:] James M. Drennan *et al. vs.* Alfred Sully *et al.* Citation. Filed Sep. 29, 1884. Ed. R. Mason, clerk.

268 United States Circuit Court, Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of said court, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries in a certain cause adjudicated in said court, wherein James M. Drennan *et al.* were complainants and Thomas Graham *et al.* were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with return of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Des Moines, in the said district, this 9th day of October, A. D. 1884.

[SEAL.] E. R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

Endorsed on cover: S. Iowa C. C. U. S. No. 1115. Alfred Sully, appellant, *vs.* James M. Drennan, W. L. McAllister, C. H. Kramer, M. D. Burket, J. W. Bowdle, *et al.* Filed 18th October, 1884.

113-287

Supreme Court of the United States.

No. 1115.

ALFRED SULLY, APPELLANT,

vs.

JAMES N. DRENNAN ET AL., APPELLEES.

Come now the appellees, Jas. M. Drennan *et al.*, by their attorneys, L. C. Blanchard and Geo. C. Morgan and H. S. Winslow, and respectfully show to this Honorable Court that said cause is a removal cause under the act of March 3d, 1875, providing for the removal of causes from the State to the Federal courts, and comes to this Honorable Court on appeal from the remanding order of the honorable circuit court of the United States for the southern district of Iowa; wherefore said appellees by their counsel aforesaid would respectfully move this Honorable Court for the advancement of said cause, under the provisions of Rule 32 of this Honorable Court.

L. C. BLANCHARD,
GEO. C. MORGAN,
H. S. WINSLOW,
Attorneys for J. M. Drennan et al., Appellees.